

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

GORDA DUNIGAN, as Personal Representative
for the ESTATE OF JAMES DUNIGAN, Deceased,

Plaintiff,

v

Case No. 1:16-CV-01324
Hon. Janet T. Neff
Mag. Judge Ellen S. Carmody

BRONSON METHODIST HOSPITAL,

Defendant.

GEOFFREY N. FIEGER (P30441)
JAMES J. HARRINGTON, IV (P65351)
Fieger, Fieger, Kenney & Harrington, P.C.
Attorneys for Plaintiff
19390 West 10 Mile Road
Southfield, MI 48075
(248) 355-5555

JOHN C. O'LOUGHLIN (P33343)
Smith, Haughey, Rice & Roegge
Attorney for Defendant, Bronson
100 Monroe Center NW
Grand Rapids, MI 49503
(616) 774-8000

EXHIBIT 8 (CORRECTED)

In the Matter Of:

DUNIGAN vs BRONSON METHODIST HOSPITAL, ET AL.

WERNER SPITZ, M.D.

March 20, 2018

Prepared for you by



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<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 WESTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4</p> <p>5 GORDA DUNIGAN, as Personal</p> <p>6 Representative for the ESTATE OF</p> <p>7 JAMES DUNIGAN, Deceased,</p> <p>8 Plaintiff,</p> <p>9 vs. Case No.1:16-CV-01324</p> <p>10 Hon. Ellen S. Carmody</p> <p>11 BRONSON METHODIST HOSPITAL,</p> <p>12 Defendant,</p> <p>13 and</p> <p>14 GORDA DUNIGAN, as Personal</p> <p>15 Representative of the ESTATE OF</p> <p>16 JAMES DUNIGAN, Deceased,</p> <p>17 Plaintiff,</p> <p>18 vs. Case No. 1:16-CV-01325</p> <p>19 DEREK NUGENT, et al, Hon. Ellen S. Carmody</p> <p>20 Defendants.</p> <p>21 /</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 JOHN C. O'LOUGHLIN</p> <p>2 Smith, Haughey, Rice & Roegge, P.C.</p> <p>3 100 Monroe Center Street, NW</p> <p>4 Grand Rapids, Michigan 49503</p> <p>5 (616) 774-8000</p> <p>6 joloughlin@shrr.com</p> <p>7 Appearing (Telephonically) on behalf of the</p> <p>8 Defendant, Bronson Methodist Hospital.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 The Deposition of WERNER SPITZ, M.D., F.C.A.P.,</p> <p>2 Taken at 23001 Greater Mack Avenue,</p> <p>3 St. Clair Shores, Michigan,</p> <p>4 Commencing at 2:17 p.m.,</p> <p>5 Tuesday, March 20, 2018,</p> <p>6 Before Linda S. Wilson, CSR-0973.</p> <p>7</p> <p>8 APPEARANCES:</p> <p>9</p> <p>10 DONALD H. DAWSON, JR.</p> <p>11 Fieger, Fieger, Kenney & Harrington</p> <p>12 19390 West Ten Mile Road</p> <p>13 Southfield, Michigan 48075</p> <p>14 (248) 355-5555</p> <p>15 d.dawson@fiegerlaw.com</p> <p>16 Appearing on behalf of the Plaintiff.</p> <p>17</p> <p>18 ALLAN C. VANDER LAAN</p> <p>19 Cummings, McClorey, Davis & Aho, P.L.C.</p> <p>20 2851 Charlevoix Drive, SE, Suite 327</p> <p>21 Grand Rapids, Michigan 49546</p> <p>22 (616) 975-7470</p> <p>23 avanderlaan@cnda-law.com</p> <p>24 Appearing (Telephonically) on behalf of the</p> <p>25 Defendants, Nugent, et al.</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX TO EXAMINATIONS</p> <p>2</p> <p>3 Witness Page</p> <p>4 WERNER SPITZ, M.D. F.C.A.P.</p> <p>5</p> <p>6 EXAMINATION 5</p> <p>7 BY MR. O'LOUGHLIN:</p> <p>8 EXAMINATION 81</p> <p>9 BY MR. VANDERLAAN:</p> <p>10 EXAMINATION 85</p> <p>11 BY MR. DAWSON:</p> <p>12 RE-EXAMINATION 86</p> <p>13 BY MR. O'LOUGHLIN:</p> <p>14</p> <p>15 INDEX TO EXHIBITS</p> <p>16</p> <p>17 Exhibit Page</p> <p>18 (Exhibit attached to transcript.)</p> <p>19</p> <p>20 DEPOSITION EXHIBIT 1 21</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">Page 5</p> <p>1 St. Clair Shores, Michigan 2 Tuesday, March 20, 2018 3 2:17 p.m. 4 5 WERNER SPITZ, M.D., F.C.A.P., 6 was thereupon called as a witness herein, and after 7 having first been duly sworn to testify to the truth, 8 the whole truth and nothing but the truth, was 9 examined and testified as follows: 10 MR. O'LOUGHLIN: The record should reflect 11 that this is the deposition of Dr. Werner Spitz being 12 taken for all purposes allowed under the Federal Court 13 Rules and the Federal Rules of Procedure. 14 Did somebody else just join the call, or 15 did I hear that wrong? Okay. Never mind. 16 EXAMINATION 17 BY MR. O'LOUGHLIN: 18 Q. Would you state your name, please? 19 A. Werner Spitz, S like Sam, P like Paul, I, T like Tom, 20 Z like zebra. 21 MR. O'LOUGHLIN: I didn't ask. Who is 22 there for the Plaintiff's Counsel? 23 MR. DAWSON: I'm here. Don Dawson on 24 behalf of Harrington. He couldn't make it. 25</p>	<p style="text-align: right;">Page 7</p> <p>1 the Fieger law firm? 2 A. Well, nowhere near the total of course, but I really 3 don't know. I have testified for the Fieger firm, and 4 I have also testified against the Fieger firm. So I 5 couldn't say. I don't really know. I have testified 6 a lot of times for and a fair number of times against 7 the Fieger firm. 8 Q. Have you testified for the Fieger firm more than 100 9 times? 10 A. I doubt that, but maybe 50. 11 Q. The fee scheduled we were provided in this case 12 indicates that before being listed as an expert you 13 require a \$4,000 retainer; is that correct? 14 A. Yes, that is correct. 15 Q. In those 50 or so cases in which you have reviewed 16 cases for the Fieger firm, did you receive that \$4,000 17 retainer? 18 A. Oh, yes. 19 Q. For this deposition you required us, the Defendants, 20 to prepay \$2,500? 21 A. Yes. I have received the usual fee of \$2,500 for this 22 deposition. 23 Q. Does that limit us to any particular time or apply to 24 any particular amount of time? 25 A. Well, it limits you to three hours.</p>
<p style="text-align: right;">Page 6</p> <p>1 BY MR. O'LOUGHLIN: 2 Q. And Doctor, what is your profession? 3 A. I'm a medical doctor, and I'm a forensic pathologist. 4 Q. You have been listed as an expert for the Plaintiff in 5 this case, and I have a report from you that is dated 6 April 15th, 2017. Do you have that report available 7 to you? 8 A. Yes, indeed, I do. 9 Q. Can you estimate for me the numbers of times you have 10 acted as an expert reviewer or witness in a legal 11 case? 12 A. Oh my God. I don't know. Many times. Over maybe 13 2,000 or 3,000. I have been doing this work -- I have 14 been a forensic pathologist for the last 64 years. 15 Q. Your date of birth is March 24th, 1959? 16 A. I wish it was. 17 Q. I'm sorry. I'm sorry. I was looking at the -- that 18 is very bad. Your date of birth is August 22, 1926? 19 A. You are correct. 20 Q. Making you 91 years old? 21 A. That's correct. 22 Q. Do you continue to actively practice? 23 A. Yes. 24 Q. Of the 2,000 to 3,000 cases which you have acted as an 25 expert reviewer or witness, how many of those were for</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. I didn't see that in the fee schedule, but that 2 shouldn't be a problem. 3 A. Okay. 4 Q. If we only take a half hour, do we get a refund? 5 A. No, you don't. It says on the invoice that the fee is 6 not refundable. 7 Q. What amount of income do you derive from acting as an 8 expert reviewer or witness per year? 9 A. Well, this is my profession. All my professional 10 income comes from my work as a forensic pathologist. 11 That involves review, and it involves testimony when 12 it happens. Many times it doesn't happen. I have 13 additional income, but that is from investments. 14 Q. I'm just asking about the amount of income from your 15 expert work either as a reviewer or witness in 16 medical-legal cases. 17 A. You mean you want an amount? 18 Q. Yes, please. 19 A. No, I cannot give you that. The reason that I cannot 20 give it to you is because my work -- my professional 21 work is jointly accomplished with my wife, and my wife 22 is adamant about not releasing that amount. 23 Q. All right. We will reserve that for the judge at the 24 time of trial. How much would you have to be paid to 25 dance naked on the table?</p>

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<p style="text-align: right;">Page 9</p> <p>1 A. I don't understand.</p> <p>2 Q. Have you in the past testified that if you are paid</p> <p>3 enough, you will dance naked on the table?</p> <p>4 A. Well, you know, that was a stupid statement that I</p> <p>5 made, but I was aggravated by the lawyer who was</p> <p>6 questioning me incessantly, but the main --</p> <p>7 unnecessarily. The main comment that I have to make</p> <p>8 now about that comment that I made is that I have</p> <p>9 never had an offer. So yes, I made the statement, but</p> <p>10 I have never had anybody wanting to take me up on it.</p> <p>11 Q. We don't know your price.</p> <p>12 A. Well, I'm pretty cheap.</p> <p>13 Q. All right, Doctor. Going to your report of April</p> <p>14 15th, 2017 in this case, you initially list the</p> <p>15 material you have reviewed. Do you have that in front</p> <p>16 of you?</p> <p>17 A. Yes.</p> <p>18 Q. Is that a list of all of the material you have</p> <p>19 reviewed regarding this case?</p> <p>20 A. No. There was some additional materials that I</p> <p>21 received just a couple -- in fact, one of them I</p> <p>22 received a big, fat envelope just yesterday. But most</p> <p>23 of the material I received before I wrote this report.</p> <p>24 Q. All right. I will try and break it down. As of the</p> <p>25 time you wrote this report are the items listed all of</p>	<p style="text-align: right;">Page 11</p> <p>1 A. Yes, I do.</p> <p>2 Q. Did you review the deposition testimony of Dr. Stark?</p> <p>3 A. Yes, I did.</p> <p>4 Q. Pardon me?</p> <p>5 A. Yes, I do have that deposition.</p> <p>6 Q. Okay. We are talking deposition transcripts, not</p> <p>7 their written report? Although those were referred to</p> <p>8 and may have been included with the transcripts, you</p> <p>9 actually reviewed their deposition testimony in this</p> <p>10 case?</p> <p>11 A. Yes, I did.</p> <p>12 Q. What else have you reviewed since April 15th, 2017?</p> <p>13 A. Well, like I said, Dr. Levine that I received</p> <p>14 yesterday, Dr. Levine, Dr. Landers, Dr. Stark, and</p> <p>15 there is another one. I forgot which one that is.</p> <p>16 Q. The pharmacologist, whatever he was,</p> <p>17 psychopharmacologist?</p> <p>18 A. Yes. He has, I think, a Greek name. Komesaroff.</p> <p>19 Q. Okay. He has not yet been deposed, but you may have</p> <p>20 his report?</p> <p>21 A. I think I have his report, and I thought I had a</p> <p>22 deposition.</p> <p>23 Q. Well, if you do, I wasn't there.</p> <p>24 A. Maybe I don't have that. But I do know that I</p> <p>25 reviewed something that is about a half inch or so in</p>
<p style="text-align: right;">Page 10</p> <p>1 the materials you have reviewed related to this case?</p> <p>2 A. No. All the material that I listed on the front page</p> <p>3 of the report were reviewed and used to write this</p> <p>4 report. There were additional materials which came in</p> <p>5 as late as yesterday.</p> <p>6 Q. Correct. I may not have been clear in my question. I</p> <p>7 was trying to go back to the time you wrote this</p> <p>8 report and asking if at that time the materials listed</p> <p>9 here were all the materials you had related to this</p> <p>10 case.</p> <p>11 A. Yes, that's correct. I did have all the materials</p> <p>12 listed that I reviewed available to me when I wrote</p> <p>13 this report.</p> <p>14 Q. Did you have anything other than those materials</p> <p>15 available to you when you wrote this report?</p> <p>16 A. No.</p> <p>17 Q. Can you identify what material you have received since</p> <p>18 April 15th, 2017?</p> <p>19 A. There were expert opinions, expert depositions,</p> <p>20 including, those that I remember offhand without</p> <p>21 searching, Dr. Levine in San Diego, Dr. Landers, and</p> <p>22 there were some others. There were at least two</p> <p>23 others. Do you want me to go look for them?</p> <p>24 Q. Do you have with you today everything that you have</p> <p>25 reviewed related to this case?</p>	<p style="text-align: right;">Page 12</p> <p>1 thickness given by Dr. Komesaroff. He is a professor</p> <p>2 at a college as far as I know, or a university.</p> <p>3 Q. What else have you reviewed? What other depositions</p> <p>4 have you received?</p> <p>5 A. I received the deposition of Dr. Levine, of Dr. Stark,</p> <p>6 of Dr. Landers. Those are all depositions that I</p> <p>7 received yesterday.</p> <p>8 Q. Have you ever reviewed the depositions of any of the</p> <p>9 healthcare providers involved in Mr. Dunigan's</p> <p>10 Emergency Department visit of May 6th, 2016?</p> <p>11 A. Yes, I did. I don't recall all their names, but I</p> <p>12 remember one, Shoemaker, and if you mention another</p> <p>13 one, then I will know whether I reviewed this</p> <p>14 gentleman's as well.</p> <p>15 Q. Mr. Shoemaker, I believe, was a security officer at</p> <p>16 Bronson. Was the other deposition you reviewed of</p> <p>17 another security officer?</p> <p>18 A. Yes. I forget his name.</p> <p>19 Q. Did you review depositions of any of the actual</p> <p>20 healthcare providers from Bronson, emergency room</p> <p>21 physician?</p> <p>22 A. Yes.</p> <p>23 Q. Nurses, medical assistants?</p> <p>24 A. Yes. There is a physician. I forgot his name. Let</p> <p>25 me see. I don't find it here. I would have to go and</p>

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<p style="text-align: right;">Page 13</p> <p>1 get it and then tell you. If you want me to do that,</p> <p>2 I will do that.</p> <p>3 Q. I really would like to know what it is you have had</p> <p>4 access to for --</p> <p>5 A. Let me go and look at what that is.</p> <p>6 Q. Please bring back all of the depositions you have</p> <p>7 reviewed --</p> <p>8 A. Okay.</p> <p>9 Q. -- and any other material.</p> <p>10 A. Okay.</p> <p>11 (Recess taken at 2:33 p.m.)</p> <p>12 (Back on the record at 2:35 p.m.)</p> <p>13 A. Gorda Dunigan.</p> <p>14 BY MR. O'LOUGHLIN:</p> <p>15 Q. Doctor, just so the record is clear, you are now</p> <p>16 listing the names of witness' depositions you have</p> <p>17 read?</p> <p>18 A. Yes. Dr. Simpson. That is a doctor of education,</p> <p>19 Dr. Dennis Simpson, Nolan Cattell. I already</p> <p>20 mentioned Charles Shoemaker.</p> <p>21 Q. You did.</p> <p>22 A. I think I already mentioned Gorda Dunigan.</p> <p>23 Q. Yes, you did.</p> <p>24 A. Dr. Stark, Dr. Landers, Dr. Levine. I think that is</p> <p>25 all. That's all the depositions. There are other</p>	<p style="text-align: right;">Page 15</p> <p>1 minute. These are statements made by Officer Shaffer</p> <p>2 and Derek Nugent. Ernst, that is E-R-N-S-T, R. Von</p> <p>3 Schwarz, M.D., Ph.D. -- M.D. Ph.D. Von Schwarz,</p> <p>4 S-C-H-W-A-R-Z. There are a number of e-mails. Do you</p> <p>5 want those too, or do you want me to clear that with</p> <p>6 Counsel?</p> <p>7 Q. Is there anything in those e-mails that you relied on</p> <p>8 to form your opinions?</p> <p>9 A. No. I didn't rely on that. But those are e-mails</p> <p>10 regarding scheduling and stuff like that with the</p> <p>11 Fieger firm.</p> <p>12 Q. No, I don't need those.</p> <p>13 A. And those are secretarial -- they were not even</p> <p>14 addressed to me. They are secretaries to secretaries.</p> <p>15 There is one document here that is entitled Notice to</p> <p>16 Produce Documents.</p> <p>17 Q. What document does it refer to?</p> <p>18 A. Let me see. Records, diaries and bills prepared in</p> <p>19 connection with this investigation and evaluation of</p> <p>20 the issues involved in this lawsuit.</p> <p>21 Q. Is that a notice for this deposition to ask you to</p> <p>22 produce those things?</p> <p>23 A. Let me see. Well, the witness is not described here,</p> <p>24 so I don't know if it is to me or not. There are</p> <p>25 statements here. Allen VanderLaan, Kurt Benson,</p>
<p style="text-align: right;">Page 14</p> <p>1 documents.</p> <p>2 Q. And I appreciate you doing that. Sorry it took as</p> <p>3 long as it did. What other documents have you</p> <p>4 reviewed since the material you listed on April 15th,</p> <p>5 2017?</p> <p>6 A. I have reviewed -- wait a minute. No, I'm sorry.</p> <p>7 That is not all the depositions. There are other</p> <p>8 depositions as well, only they are packaged a little</p> <p>9 differently, and so I did not think that they were --</p> <p>10 I did not remember that they were depositions. But</p> <p>11 there are two big binders with depositions. Those</p> <p>12 contain Dr. Regot, deposition of Kevin Patel,</p> <p>13 deposition of Ryan Szumski, that is S-Z-U-M-S-K-I,</p> <p>14 deposition of Marianne Loudes, L-O-U-D-E-S, deposition</p> <p>15 of Kimberly Gilbert, Shay, S-H-A-Y, deposition of</p> <p>16 Brian Blair, deposition of Dennis Watson, deposition</p> <p>17 of Amber Bishop, deposition of Christine Rohr,</p> <p>18 R-O-H-R, Antoura Farrell Dunigan, Farrell is</p> <p>19 F-A-R-R-E-L-L, deposition of Lola Streeter, that's</p> <p>20 S-T-R-E-E-T-E-R, deposition of Steven Dunigan,</p> <p>21 deposition of Quincy Lamar Dunigan, a deposition of</p> <p>22 Detective Eric Shaffer, S-H-A-F-F-E-R, deposition of</p> <p>23 officer Derek Nugent, N-U-G-E-N-T.</p> <p>24 I think I have gotten to the end. Yes.</p> <p>25 Oh, you wanted all of the documents. So hold on a</p>	<p style="text-align: right;">Page 16</p> <p>1 Cummings, McClorey, Davis and Acho. That's it.</p> <p>2 Q. All right. That appears to be perhaps either a</p> <p>3 Request for Production to the Plaintiff or from the</p> <p>4 Plaintiff to the Defendant, so I don't need that</p> <p>5 either.</p> <p>6 A. Okay.</p> <p>7 Q. I'm looking for any other material you have reviewed</p> <p>8 related to this case.</p> <p>9 A. I will tell you. I have the Complaint. There is a</p> <p>10 Complaint to each of the Defendants. So then there is</p> <p>11 a document here, a discharge note from the ER. It</p> <p>12 doesn't say from whom this is, but that is somebody in</p> <p>13 the emergency room that discharged this patient. It's</p> <p>14 a discharge note suffice it to say. I don't know by</p> <p>15 whom.</p> <p>16 Q. Is it discharge instructions?</p> <p>17 A. No, it's not discharge instructions. It describes --</p> <p>18 I will read to you the beginning of it, and then you</p> <p>19 will know. "Went out to assist Bronson Security</p> <p>20 Officer Ripley and day shift Public Safety Officer</p> <p>21 Nugent with a subject James Ronald Dunigan, who was</p> <p>22 refusing to leave the emergency room after being</p> <p>23 discharged. Mr. Dunigan had been cleared medically by</p> <p>24 ER and wheeled out to the lobby around 4:27 a.m.</p> <p>25 Apparently staff had told him he could wait until the</p>

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<p style="text-align: right;">Page 17</p> <p>1 busses started running. Security" --</p> <p>2 Q. All right. Doctor, I'm sorry to interrupt. I</p> <p>3 apologize. You don't need to read the whole thing.</p> <p>4 That appears to be a statement by the security officer</p> <p>5 or police officer.</p> <p>6 A. Yes, that is what it is.</p> <p>7 Q. But let's continue trying to identify the material you</p> <p>8 have reviewed.</p> <p>9 A. Okay. I will tell you material that I reviewed.</p> <p>10 There is an almost two-inch document of medical</p> <p>11 records from Bronson Hospital.</p> <p>12 Q. Records in addition to -- do those records include the</p> <p>13 Emergency Department visit of May 6th, 2016 or records</p> <p>14 of prior care?</p> <p>15 A. Let me see. These are old records. The date on the</p> <p>16 top record is August 8th -- sorry, August 11th, it's</p> <p>17 hard to make out, of the year 2009.</p> <p>18 Q. Can you tell where those records are from? Are they</p> <p>19 from Bronson?</p> <p>20 A. Bronson. Bronson Hospital.</p> <p>21 Q. All right. As you held them up, I saw what appeared</p> <p>22 to be sticky notes, pink sticky notes?</p> <p>23 A. Yes, they are sticky notes that my office manager put</p> <p>24 in.</p> <p>25 Q. You did not put those in?</p>	<p style="text-align: right;">Page 19</p> <p>1 there is another copy of the Complaint, a Complaint to</p> <p>2 another entity, another person, another Complaint. I</p> <p>3 think there are four such Complaints. There is</p> <p>4 another medical record from Bronson Hospital, which is</p> <p>5 an admitting record. The date of this record is the</p> <p>6 date in question, which is May 6th, 2016 at 2:13 at</p> <p>7 night, which is the date that Mr. Dunigan came to the</p> <p>8 emergency room.</p> <p>9 There is another similar record, which is</p> <p>10 labeled Incident/Investigation Report dated May 13th,</p> <p>11 2016. This is subtitled Incident Information. The</p> <p>12 main title on the top is Incident/Investigation</p> <p>13 Report.</p> <p>14 Q. Do you know by whom that report was created or by what</p> <p>15 entity that report was created?</p> <p>16 A. The report is the same format as other reports, and in</p> <p>17 particular the Bronson Hospital record dated 5-6-2016</p> <p>18 and with a time of 2:13, which I just read to you a</p> <p>19 minute ago. That is the record -- these two seem to</p> <p>20 be related because they look the same.</p> <p>21 The first one, of course, as I stated, was</p> <p>22 the time 2:13 is when Mr. Dunigan came -- arrived at</p> <p>23 the emergency room, at 2:13 at night. Then there is a</p> <p>24 record here, which is from -- which I think is a</p> <p>25 duplicate actually, from Ernst R. Von Schwarz, M.D.,</p>
<p style="text-align: right;">Page 18</p> <p>1 A. No, I did not.</p> <p>2 Q. Do you know what they designate?</p> <p>3 A. No, I don't know what they designate specifically</p> <p>4 other than that they are old medical records.</p> <p>5 Q. Did you review those old medical records?</p> <p>6 A. I skimmed them. That's about it.</p> <p>7 Q. Did you review the depositions you have listed?</p> <p>8 A. Most of them I have. Some of them I have skimmed just</p> <p>9 to make me acquainted with the fact that those are</p> <p>10 really not necessary for me to know in detail because</p> <p>11 I had already formulated my opinions. I had written a</p> <p>12 document about my main opinions. I supplemented my</p> <p>13 information that I had from before by reading the</p> <p>14 depositions that came yesterday, and that's about it.</p> <p>15 There is some documents that I thought I</p> <p>16 need to review. Others I really did not need to</p> <p>17 review because there was duplicate information in</p> <p>18 them. By skimming them the information that I would</p> <p>19 be confronting is already covered in other depositions</p> <p>20 and documents. So I did not really continue to review</p> <p>21 those documents. I did not think that that was</p> <p>22 necessary.</p> <p>23 There is a record here from the ambulance</p> <p>24 crew, which is listed -- which is labeled pre-hospital</p> <p>25 care report summary. That is dated 01-17-2016. Then</p>	<p style="text-align: right;">Page 20</p> <p>1 Ph.D. This one is dated December 31, 2017.</p> <p>2 In addition to these records there is an</p> <p>3 autopsy report, which was compiled by Dr. Douglas, I</p> <p>4 think, Elizabeth Douglas, M.D. There is also a death</p> <p>5 certificate and a toxicology report. This is the</p> <p>6 extent of the documents that I have except for the</p> <p>7 document that I generated, which is my opinion letter.</p> <p>8 Q. So you have now identified all of the material you</p> <p>9 have reviewed related to this case?</p> <p>10 A. Yes.</p> <p>11 Q. Aside from the report you prepared on April 15th, 2017</p> <p>12 that we have received, do you have any other notes or</p> <p>13 writings related to your review of this case?</p> <p>14 A. I do. But I hasten to in this regard because these</p> <p>15 are not opinion notes, but rather sections that I</p> <p>16 wanted to summarize from the records. So they are</p> <p>17 notes, all right, but they are not opinion notes. My</p> <p>18 opinions are rendered in the letter that I wrote to</p> <p>19 Mr. Harrington on April 15th, 2017.</p> <p>20 Q. How many pages of notes do you have?</p> <p>21 A. Let me see. I don't know. Somewhere around ten or</p> <p>22 so. Maybe it's nine. That's it.</p> <p>23 Q. Please assemble all of the pages of the notes you have</p> <p>24 and hand them to the court reporter to be marked as an</p> <p>25 exhibit.</p>

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<p style="text-align: right;">Page 21</p> <p>1 A. Okay.</p> <p>2 MARKED BY THE REPORTER:</p> <p>3 DEPOSITION EXHIBIT 1</p> <p>4 3:10 p.m.</p> <p>5 BY MR. O'LOUGHLIN:</p> <p>6 Q. Has it been marked?</p> <p>7 A. It has been marked, and this is Exhibit Number 1.</p> <p>8 Q. Is Exhibit Number 1 then collectively the pages of all</p> <p>9 of the notes you have made related to this case?</p> <p>10 A. Yes. There is one letter on the top of -- I didn't</p> <p>11 separate a letter from Mr. Harrington's paralegal,</p> <p>12 Devon Barry. That letter is appended to five yellow</p> <p>13 pages, lined yellow pages, which are my notes.</p> <p>14 Q. Thank you.</p> <p>15 A. There is additional yellow pages, which are also part</p> <p>16 of this package that we marked just now, but those are</p> <p>17 not -- they are loose. They are not attached to the</p> <p>18 Fieger office letter.</p> <p>19 Q. But they are part of Exhibit 1?</p> <p>20 A. They are part of Exhibit 1. Am I correct? Yes, I am</p> <p>21 correct.</p> <p>22 Q. I would like those to be kept together and arranged</p> <p>23 for copies to be made to be attached to the</p> <p>24 transcript.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 23</p> <p>1 A. Not necessarily that he wanted, but I have my own</p> <p>2 method of writing opinions. So most of my opinions</p> <p>3 are very similar, depending on the case of course. So</p> <p>4 I write the opinion accordingly. Usually it</p> <p>5 answers -- the opinions would answer anybody's request</p> <p>6 for review and opinion. Many times I don't even know</p> <p>7 these lawyers, but the opinions are usually very</p> <p>8 similar in that they would answer the majority of</p> <p>9 inquiries.</p> <p>10 Q. Did you understand, either from being directly asked</p> <p>11 or from your routine, based upon the many cases you</p> <p>12 have had with the Fieger firm in the past, did you</p> <p>13 understand whether you were being asked to comment in</p> <p>14 any way on the quality of care provided?</p> <p>15 A. No. The quality of care I don't usually tackle that</p> <p>16 because I am not an emergency physician, and I'm a</p> <p>17 forensic pathologist, so I do not address standard of</p> <p>18 care. Although there are some issues here in this</p> <p>19 case that I, as a person, not as an expert even, but</p> <p>20 as a person, I took exception to the way that this</p> <p>21 individual was handled. He was not handled like I</p> <p>22 would want to be handled or like anybody in my family</p> <p>23 should be handled. So I told him that. But I don't</p> <p>24 know if I wrote it in my opinion.</p> <p>25 I haven't reviewed my opinion in some time,</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. When you were contacted regarding this case, what were</p> <p>2 you asked to do?</p> <p>3 A. I was asked to, like I normally do, determine the</p> <p>4 cause of death, determine to see if there was</p> <p>5 conscious pain and suffering, and I'm saying I wasn't</p> <p>6 specifically instructed to do this or that because</p> <p>7 that is the way that Fieger's office sends me files.</p> <p>8 I have worked with them a fairly large number of</p> <p>9 times, so I should know what they need. So I address</p> <p>10 those issues. Those are addressed in my report.</p> <p>11 Q. So what are those things that you know the Fieger firm</p> <p>12 needs when it sends you a file, a record?</p> <p>13 A. Well, they want to know the cause of death. They want</p> <p>14 to know whether this individual had conscious pain and</p> <p>15 suffering, whether the death certificate is correctly</p> <p>16 issued, whether the manner of death is correct and</p> <p>17 various -- yes, that's about it.</p> <p>18 Then if they have other questions, they</p> <p>19 call me, and they say well, you didn't include such</p> <p>20 and such, and then I may add it or I may not add it,</p> <p>21 depending on what is the question that they ask me.</p> <p>22 But I've known Jim Harrington for a long time, and I</p> <p>23 know what he wants usually.</p> <p>24 Q. Have you now listed those things that you understood</p> <p>25 he wanted?</p>	<p style="text-align: right;">Page 24</p> <p>1 but I don't believe that Mr. Dunigan, with his</p> <p>2 underlying condition that he had at the time the</p> <p>3 police came and took him to the jail, that they</p> <p>4 handled him correctly. I would not want to be handled</p> <p>5 that way.</p> <p>6 Q. Okay. Let's sort a few things out. You have agreed</p> <p>7 that you are not an emergency medicine physician,</p> <p>8 correct?</p> <p>9 A. No, that is correct.</p> <p>10 Q. And not an expert in emergency medicine, correct?</p> <p>11 A. No, I'm not an expert in emergency medicine, but I'm a</p> <p>12 physician who knows certain things that occurred here.</p> <p>13 And under those circumstances this is individual did</p> <p>14 not belong in jail, belonged to the hospital, and he</p> <p>15 was not allowed to stay in the hospital. He was not</p> <p>16 even admitted.</p> <p>17 So all of these things together, and then</p> <p>18 on top of that, taken to the hospital, yes, I know</p> <p>19 that he asked to be taken to the hospital, but what</p> <p>20 does he know about what needs to be admitted and what</p> <p>21 really his underlying condition is. He didn't know</p> <p>22 that. Mr. Dunigan had no idea what he is suffering.</p> <p>23 So when I take all that together, I did not</p> <p>24 like the -- as a physician, not as an expert forensic</p> <p>25 pathologist, but as a physician, I did not like the</p>

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<p style="text-align: right;">Page 25</p> <p>1 way this man was handled, this man was treated, this</p> <p>2 man was confronting when he was handled by a number of</p> <p>3 people who were not necessarily treating him like a</p> <p>4 patient, not like -- and like a sick patient, like a</p> <p>5 patient who was in the throes of death. They did not</p> <p>6 recognize it, and they should have recognized it.</p> <p>7 That is my opinion.</p> <p>8 Q. You don't claim to be an expert in emergency medicine,</p> <p>9 correct?</p> <p>10 A. No, I'm not an emergency medicine physician.</p> <p>11 Q. You don't claim to be an expert in emergency nursing,</p> <p>12 correct?</p> <p>13 A. No, that is correct.</p> <p>14 Q. You don't claim to be an expert in radiology, correct?</p> <p>15 A. Correct.</p> <p>16 Q. You don't claim to be an expert in hospital security,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. You don't claim to be an expert in law enforcement or</p> <p>20 the conduct of law enforcement officers, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Do you claim to be an expert in the law known as</p> <p>23 EMTALA, the Emergency Medical Treatment and Active</p> <p>24 Labor Act?</p> <p>25 A. Yes, I'm aware of such a thing, but I have not ever</p>	<p style="text-align: right;">Page 27</p> <p>1 really very little connected to him falling out of a</p> <p>2 bus when he sustained the fall and hit something on</p> <p>3 cement, as he indicated.</p> <p>4 It was a different kind of chest pain</p> <p>5 altogether, and that chest pain is notorious for</p> <p>6 fearing doom. That pain is a different kind of pain.</p> <p>7 That is the pain of a heart attack.</p> <p>8 Q. Upon what do you base that statement?</p> <p>9 A. On the fact that he had manifestations of congestive</p> <p>10 heart failure. His breathing, his sickening type of</p> <p>11 snoring that is not that he is sleeping, but it is a</p> <p>12 kind of snoring, if you will, where fluids in the lung</p> <p>13 go up and down the airway every breath he takes. That</p> <p>14 is not necessarily annoying for others to hear. That</p> <p>15 is not the issue. The issue is that it scared the</p> <p>16 daylights out of the individual who suffers it.</p> <p>17 It is a type of pain is associated with</p> <p>18 asphyxiation. Asphyxiation is always a very fearful</p> <p>19 experience because here the lung contains fluid. When</p> <p>20 the fluid is moved by breathing up and down, there is</p> <p>21 in addition to the noise that this makes, there is</p> <p>22 also a lack of air in the lungs substituted for</p> <p>23 fluids, so-called edema fluids, which is none other</p> <p>24 than froth.</p> <p>25 And the officers looked at all that, stated</p>
<p style="text-align: right;">Page 26</p> <p>1 made use of that type of information. So I know of</p> <p>2 it, but I really don't know a whole lot of it.</p> <p>3 Q. When you say you haven't made use of it, that means</p> <p>4 you haven't had to worry about complying with EMTALA?</p> <p>5 A. Or not complying. I don't know enough about EMTALA to</p> <p>6 know how to handle that. I don't see patients in my</p> <p>7 practice.</p> <p>8 Q. Correct. What is your understanding of why</p> <p>9 Mr. Dunigan came to the Emergency Department in the</p> <p>10 early morning hours of May 6th, 2016?</p> <p>11 A. Well, he had chest pain he claims, and he came because</p> <p>12 it was for him a fearful experience. That is what</p> <p>13 took him to the hospital. He, in fact, was in a</p> <p>14 condition which in his mind required transport to the</p> <p>15 hospital, like you said, in the middle of the</p> <p>16 nighttime, and it was a fearful experience for him, so</p> <p>17 he called for an ambulance to take him.</p> <p>18 Q. What is your understanding of how long he had had this</p> <p>19 chest pain?</p> <p>20 A. He indicates that, as a layperson, I have to say that,</p> <p>21 he says that -- or he thought there is a connection</p> <p>22 between his chest pain and the bruise he had on his</p> <p>23 chest and his actual pain, that that resulted from</p> <p>24 internal bleeding he thought, and that he -- chest</p> <p>25 pain from -- the real reason for the chest pain was</p>	<p style="text-align: right;">Page 28</p> <p>1 it in their packing him into the seat in the police</p> <p>2 vehicle, did nothing about it. They said: Oh, he is</p> <p>3 faking. Oh, we know well what to expect from him, and</p> <p>4 so on and so forth. The officers know or should know</p> <p>5 what that means. I know they are not physicians, but</p> <p>6 they should know that because it occurs a lot more</p> <p>7 often than we want.</p> <p>8 Q. Doctor, if we can, for the sake of addressing</p> <p>9 different periods of time, break this ED presentation</p> <p>10 down into the period of time from when Mr. Dunigan was</p> <p>11 picked up by the ambulance to the time that he was</p> <p>12 discharged from the Emergency Department into the</p> <p>13 waiting room, when he was wheeled into the waiting</p> <p>14 room in a wheelchair. Do you understand that frame of</p> <p>15 time I'm talking about?</p> <p>16 A. Well, it's kind of a long question which requires</p> <p>17 probably a long answer, but I hope I will comply with</p> <p>18 your request. If I don't, so please tell me.</p> <p>19 Q. Let me go back and get some foundation. Did you</p> <p>20 review the videos that you received as listed in your</p> <p>21 report?</p> <p>22 A. Yes, I did review that. I reviewed the videos. To</p> <p>23 answer your question, I would like to state that the</p> <p>24 video clearly shows, or one of them, clearly shows a</p> <p>25 restless -- I mean a restless individual who aimlessly</p>

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<p style="text-align: right;">Page 29</p> <p>1 walks around because he is experiencing -- well, for 2 lack of a better term, he is experiencing the sense 3 that he is no long for this world. He is experiencing 4 pain that elicits in him the thought that he will soon 5 die. He hears himself breathe. He knows how he 6 feels. He has acute chest pain of the type that is 7 horrible. People are driven to hospitals all the time 8 when they experience this kind of pain. 9 So that is what the video clearly shows. 10 Then the video shows him in the way he was handled 11 when they put him out on the curb because they decided 12 in the hospital that he has to leave the hospital. So 13 they gave an order to the police safety people, to the 14 police officers that worked for the hospital, to take 15 him out of there. That was not very nice of them 16 either. 17 Although they gave him permission to stay 18 until 6:00, it wasn't until 6:30 that -- or close to 19 6:30 that he was actually placed on the curb to fend 20 for himself. Police came and took him off from the 21 hospital, and there is a video which shows how he is 22 handled when he is put in the vehicle. He is pushed 23 into the vehicle. He is falling over. They pull him 24 and shove him and treat him like an object, not like a 25 person.</p>	<p style="text-align: right;">Page 31</p> <p>1 evaluated and discharged from the Emergency 2 Department? 3 A. Yes. I'm fully aware of that, but I don't necessarily 4 agree with that handling either. 5 Q. All I'm trying to get here, Doctor, is to a timeframe 6 so that we can ask questions. What I'm talking about 7 is the timeframe up to the time that Mr. Dunigan is 8 discharged from the Emergency Department and into the 9 waiting room. My question is do you understand the 10 timeframe I'm talking about? 11 A. Yes, I understand fully. From 2:13 when he arrived 12 until 4:30. 13 Q. Okay. Thank you. From the time he was picked up by 14 the ambulance until the time he is discharged to the 15 waiting room, are you aware of any evidence that he 16 exhibited any clinical signs or symptoms of I will 17 start with a myocardial infarction? 18 A. I don't know whether I can answer that because there 19 really is no medical information that would have 20 allowed me to make that kind of statement to answer 21 your question. An x-ray to determine whether he has 22 got broken ribs and then they find no broken ribs and 23 make a diagnosis that there is nothing wrong with him, 24 so they discharged him, that is not the way to do it. 25 My objection is that I, without necessarily</p>
<p style="text-align: right;">Page 30</p> <p>1 He is heard by me breathing this terrible 2 snoring sound. He at the same time he is -- a comment 3 is made by officers that he is foaming at the mouth. 4 Well, you know, as a physician, not as an emergency 5 physician, but as a physician who has been taught over 6 and again that this kind of thing is not long. This 7 type of thing is ending in death of this patient. 8 How does he die? He dies of suffocation. 9 That is a horrible type of death. That is what I saw. 10 That I hope answers your question. 11 Q. Not even close, Doctor. My question was did you 12 review the videos, yes or no? 13 A. Yes, I did. 14 Q. Thank you. I will move to strike all of the other 15 information you just tried to convey. 16 A. Okay. 17 Q. Do I have your permission to interrupt you in the 18 future when you go way off course and go beyond the 19 question I'm asking? 20 A. Of course. 21 Q. All right. Did you review the videos from the Bronson 22 waiting room? 23 A. Yes. 24 Q. Did you understand that what was depicted in those 25 videos was a period of time after Mr. Dunigan had been</p>	<p style="text-align: right;">Page 32</p> <p>1 dealing with the standard of care, because I don't 2 know what the standard of care is, but as a physician, 3 I can tell you that I don't want to be handled that 4 way. Neither do I want anybody else to be handled 5 that way. They did nothing for this individual. They 6 did nothing in the emergency room, and they should 7 have done something for him. That something may even 8 have extended his life. 9 Q. Doctor, if you could listen to my question and try 10 just to answer the question rather than giving 11 speeches. I will tell you right now that I will 12 object to paying you one dime if we go beyond three 13 hours because of the length of your answers, and I 14 will be happy to present that to Court. 15 A. Okay. 16 Q. Now, my question was are you aware of any evidence 17 that Mr. Dunigan exhibited any clinical signs or 18 symptoms of an MI, a heart attack, up to the time he 19 was discharged from the Emergency Department into the 20 waiting room? 21 A. Yes. He complained of pain, of chest pain. That is 22 all he could complain about. In addition to that 23 there is some evidence of him having swollen legs. In 24 addition to that he had difficulty breathing. So all 25 this points to at least excluding --</p>

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<p style="text-align: right;">Page 33</p> <p>(Telephone connection cut out at 3:35 p.m.) (Back on the record at 3:39 p.m.)</p> <p>BY MR. O'LOUGHLIN:</p> <p>Q. I can tell you that I lost you after my last question from the time you said "chest pain." So I don't have any idea what you said after that or if the court reporter took it down. We will try to resume if I may.</p> <p>A. Well, maybe that is all as well that you lost it.</p> <p>Q. It probably is all as well, but thank you. If I may, I don't want the answer read back because it looked like you were talking for a really long time after that question. So if I may, I would like to ask it again. Is that acceptable?</p> <p>A. Sure.</p> <p>Q. I am talking about the time period from the time Mr. Dunigan was picked up by the ambulance to the time he was discharged from the Emergency Department and wheeled into the waiting room. Can you point to evidence of any clinical signs or symptoms of a heart attack that he exhibited?</p> <p>A. None really as indicated in the emergency room records that permits me to quote them at this time. When such a situation arises, it should -- there are situations where it's a matter of ruling out. Not every</p>	<p style="text-align: right;">Page 35</p> <p>Emergency Department and wheeled into the waiting room, did he have any signs or symptoms of a heart attack? Your answer started as "no." If that is the answer, I will take it. If you know the signs and symptoms, I want to know about those.</p> <p>A. Well, he had chest pain. That was his complaint when he came in.</p> <p>Q. Any potential sign or symptom of a heart attack other than that?</p> <p>A. That is a sign of a heart attack unless proven otherwise.</p> <p>Q. Anything other than chest pain which you would consider a sign or symptom of a heart attack that he presented up to the time he was discharged to the waiting room?</p> <p>A. I do not see any mention in the record of the emergency room that would talk about manifestations of a heart attack because I must think from the lack of mentioning any other manifestations, which in my opinion don't have to be there, but at least -- I don't know that they even tried to find anything else.</p> <p>There are things that can be done with somebody who has chest pain with a history of a heart condition that would at least need -- call for doing something that would confirm or dismiss the thought of</p>
<p style="text-align: right;">Page 34</p> <p>condition is manifested by symptoms. But chest pain in a 57 year old individual with a history of -- he had a history, a long history, from the hospital where he is known to have hypertension and diabetes and all these conditions that he had. They knew that. They had this on record.</p> <p>So it's a matter of saying wait a minute, this individual has been here for years and been coming here to get medical care. So why don't we look this up on the computer. If they would have done that, they would have known his background. That was never done. Instead, they took an x-ray and sent him to the curb.</p> <p>Actually, they allowed him to stay until 6:00 when the busses go. So he sat there, but he is obviously on the video that I saw, he is --</p> <p>Q. Doctor, you gave me permission earlier when you went way beyond the question --</p> <p>A. Okay.</p> <p>Q. Now, my question -- do you remember my question?</p> <p>A. What did he do between 2:13 -- or what happened between 2:13 and 4:30. That is your question. Am I correct?</p> <p>Q. My question is from the time he was picked up by the ambulance to the time he was discharged from the</p>	<p style="text-align: right;">Page 36</p> <p>a heart attack.</p> <p>Q. Aside from the complaint of chest pain as reflected in the medical record from the Emergency Department, did Mr. Dunigan exhibit any signs or symptoms of a heart attack up to the time he was wheeled into the waiting room?</p> <p>A. No, I'm not aware of any direct manifestations of a heart attack, but they don't have to be there. So I mean I don't know how else to answer that. If everybody had other manifestations that without any doubt confirm a heart attack other than a pathologist, the -- what ever happened to Troponin to do that, to find out if he has got manifestations of a heart attack? I don't know how to answer that any differently.</p> <p>Q. How about answering it straight, Doctor. You have given thousands of depositions. Please just try to answer my question without the speeches. What do you consider to be a clinical sign or symptom of a heart attack?</p> <p>A. Laboratory work.</p> <p>Q. You consider laboratory work to be a clinical sign or symptom?</p> <p>A. Yes. That is done in the clinic when somebody comes in in a condition that could be related to a heart</p>

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<p style="text-align: right;">Page 37</p> <p>1 attack. That should be used, and that is called for a</p> <p>2 laboratory.</p> <p>3 Q. Okay. I guess we should remember that you are not a</p> <p>4 clinician, true?</p> <p>5 A. No, I'm not a clinician.</p> <p>6 Q. Okay. This is unbelievable. Are you aware that every</p> <p>7 day all across the country thousands of people present</p> <p>8 to Emergency Departments with complaints of chest</p> <p>9 pain?</p> <p>10 MR. DAWSON: Objection, foundation.</p> <p>11 A. I'm sure that is true.</p> <p>12 MR. DAWSON: Go ahead, Doctor.</p> <p>13 A. I'm sure that that is true.</p> <p>14 BY MR. O'LOUGHLIN:</p> <p>15 Q. Are you aware of the fact that the vast majority of</p> <p>16 those patients do not have chest pain due to a heart</p> <p>17 attack?</p> <p>18 MR. DAWSON: Objection, foundation. Go</p> <p>19 ahead, Doctor.</p> <p>20 A. That is not my consideration, whether they have or</p> <p>21 don't have. It is -- it requires that everything be</p> <p>22 done in the interest of the patient with the chest</p> <p>23 pain at the right age that that patient could have a</p> <p>24 heart attack, and therefore, it has to be ruled out.</p> <p>25</p>	<p style="text-align: right;">Page 39</p> <p>1 in the wheelchair is when you see video of him in the</p> <p>2 waiting room, true?</p> <p>3 A. Yes.</p> <p>4 Q. Up to that point are you aware of any evidence</p> <p>5 indicating that his condition deteriorated or got</p> <p>6 worse up to that time from the time he got to the</p> <p>7 hospital?</p> <p>8 A. No, I don't see that in the emergency room there was</p> <p>9 evidence that he got worse in the emergency room.</p> <p>10 Q. With that same end point, up to the time that he was</p> <p>11 rolled into the waiting room after being discharged</p> <p>12 from the Emergency Department are you aware of any</p> <p>13 evidence that he had any sort of breathing difficulty</p> <p>14 or respiratory difficulty?</p> <p>15 A. There is no mention of any of that. The heart attack</p> <p>16 could have occurred with little or no manifestations.</p> <p>17 So that clinically a heart attack would not -- would</p> <p>18 may well be there but needs to be explored whether</p> <p>19 it's there or not because heart attacks can be very</p> <p>20 subtle in onset.</p> <p>21 So if you don't make an effort to find it,</p> <p>22 you are not going to know that it's there or not. He</p> <p>23 did not -- other than chest pain, severe chest pain,</p> <p>24 such that it was fearful for him to have that chest</p> <p>25 pain, and the negative x-ray on top of it, that</p>
<p style="text-align: right;">Page 38</p> <p>1 BY MR. O'LOUGHLIN:</p> <p>2 Q. Okay. Are you aware of any evidence, based upon your</p> <p>3 thorough review of all these materials, that</p> <p>4 Mr. Dunigan's condition in any way deteriorated up to</p> <p>5 the time that he was discharged from the Emergency</p> <p>6 Department and wheeled into the waiting room?</p> <p>7 A. I don't know what that means. Could you ask me that</p> <p>8 differently, please?</p> <p>9 Q. Are you aware of any evidence, based upon your review,</p> <p>10 that Mr. Dunigan's condition deteriorated or got worse</p> <p>11 up to the time that he was wheeled into the waiting</p> <p>12 room?</p> <p>13 MR. DAWSON: After he was discharged from</p> <p>14 care?</p> <p>15 MR. O'LOUGHLIN: Correct.</p> <p>16 MR. DAWSON: There you go, Doctor.</p> <p>17 MR. O'LOUGHLIN: But before he is wheeled</p> <p>18 into the waiting room or up to that time.</p> <p>19 BY MR. O'LOUGHLIN:</p> <p>20 Q. Do you understand my question, Doctor?</p> <p>21 A. Not really. No, I don't. He was discharged from the</p> <p>22 emergency room to the waiting room like around 4:30.</p> <p>23 Q. Let me just -- I'm still trying to set the stage. I</p> <p>24 can't believe it's this hard.</p> <p>25 After he is discharged to the waiting room</p>	<p style="text-align: right;">Page 40</p> <p>1 creates a problem if you are not going to continue</p> <p>2 looking for what may be the source of the pain when</p> <p>3 nothing that would show up on x-ray is actually there.</p> <p>4 Q. You agree that the chest x-ray was negative?</p> <p>5 A. The chest x-ray was negative. There was no evidence</p> <p>6 of broken ribs. There was no evidence of bruised</p> <p>7 lungs. There was no evidence of any positive</p> <p>8 manifestation that would warrant that kind of chest</p> <p>9 pain.</p> <p>10 Q. What was thought to be -- based upon your review, what</p> <p>11 was thought to be the cause of Mr. Dunigan's chest</p> <p>12 pain?</p> <p>13 A. He had chest pain because he had 99 percent occlusion</p> <p>14 of two major coronary arteries.</p> <p>15 Q. Maybe you misunderstood my question. Let me make it</p> <p>16 clear. From your review of the record and the reason</p> <p>17 Mr. Dunigan came to the hospital and the conclusion</p> <p>18 reached by the healthcare providers in the Emergency</p> <p>19 Department, what is your understanding of what was</p> <p>20 thought to be the cause of his chest pain?</p> <p>21 A. I have to believe that they thought that he fell out</p> <p>22 of the bus and bruised himself.</p> <p>23 Q. Which is exactly what he reported, true?</p> <p>24 A. Which is what he reported, yes. Otherwise, they</p> <p>25 wouldn't have known. Otherwise, they wouldn't have</p>

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<p style="text-align: right;">Page 41</p> <p>1 taken the x-ray.</p> <p>2 Q. And from your close review of the records, did you</p> <p>3 discern that on examination that chest pain was</p> <p>4 reproducible with palpation?</p> <p>5 A. You mean that if they pushed with their hand on his</p> <p>6 chest that it became worse?</p> <p>7 Q. In the area where the patient was complaining, yes.</p> <p>8 A. Yes. I understand that. I'm not surprised of that.</p> <p>9 But at the same time, it was the chest pain that got</p> <p>10 worse by exertion.</p> <p>11 Q. Upon what do you base that claim?</p> <p>12 A. Because the record does show that.</p> <p>13 Q. Where do you see anywhere in the record that it says</p> <p>14 this pain was worse with exertion?</p> <p>15 A. Well, I don't know where I saw it right now, but</p> <p>16 somewhere in the records it mentions chest pain</p> <p>17 getting worse from exertion.</p> <p>18 Q. Well, you better dig out the record.</p> <p>19 A. No, I can't do that now. That is just too much work</p> <p>20 to do that now.</p> <p>21 Q. It's not a long record.</p> <p>22 A. Because I need to read the record from the beginning.</p> <p>23 Let me see what I can come up with. This record is</p> <p>24 Bronson emergency room record. The middle of the</p> <p>25 page. I don't know what number. Here, page 2, it</p>	<p style="text-align: right;">Page 43</p> <p>1 timeframe from when he was picked up by the ambulance</p> <p>2 on May 6th to the time he was discharged from the</p> <p>3 Emergency Department and wheeled into the waiting room</p> <p>4 on May 6th. Do you have an opinion as to what was</p> <p>5 thought to be -- I'm sorry -- do you have any evidence</p> <p>6 that you can point to that indicates Mr. Dunigan</p> <p>7 complained of chest pain with exertion?</p> <p>8 A. Whether he had chest pain on exertion or not, he has</p> <p>9 evidence in the records where they know that he is</p> <p>10 diabetic, where they know that he is hypertensive,</p> <p>11 where they know that he has got some other time chest</p> <p>12 pain on exertion. All these things add up. Then he</p> <p>13 has -- somewhere I read that he had had swollen ankles</p> <p>14 as well.</p> <p>15 Q. I didn't understand what you said there.</p> <p>16 A. I said that somewhere I noticed that he had on that</p> <p>17 day he had swollen ankles, and he is a patient of</p> <p>18 diabetes, and they --</p> <p>19 Q. Doctor, I'm going to interrupt you again. Do you</p> <p>20 recall my question?</p> <p>21 A. Yes, I know your question. But I need to point out to</p> <p>22 you that there is a previous number of records at that</p> <p>23 very same hospital. So they knew of his condition or</p> <p>24 should have known.</p> <p>25 Q. Do you recall my question?</p>
<p style="text-align: right;">Page 42</p> <p>1 says chest pain on exertion. It's about five inches</p> <p>2 from the top.</p> <p>3 Q. Are you familiar with how you read Emergency</p> <p>4 Department records?</p> <p>5 A. I read them. I mean I know how to read English. It</p> <p>6 says chest pain on exertion.</p> <p>7 Q. Right. Do you believe that applies to a past history</p> <p>8 as opposed to what he presented on this occasion?</p> <p>9 A. This is a record of -- let me see.</p> <p>10 Q. Let me try as hard as I can to try to shorten it up.</p> <p>11 Do you see a date associated with that complaint?</p> <p>12 A. I see it is -- well, there are several dates. Maybe</p> <p>13 not. Yes, there are several dates.</p> <p>14 Q. 2012 and 2014?</p> <p>15 A. Yes.</p> <p>16 Q. Do you believe that that reference suggests that he</p> <p>17 had chest pain with exertion at the time he presented</p> <p>18 to the Emergency Department on May 6th, 2016?</p> <p>19 A. Well, it may be. I don't know. I'm not clear about</p> <p>20 whether it was on -- these were the dates when he had</p> <p>21 chest pain on exertion, and that would have -- should</p> <p>22 have raised a red flag for any time that if you have</p> <p>23 chest pain on exertion, at any other time that means</p> <p>24 the coronary arteries are in bad shape.</p> <p>25 Q. My question, again, I attempted to talk about the</p>	<p style="text-align: right;">Page 44</p> <p>1 A. Yes.</p> <p>2 Q. Any evidence that Mr. Dunigan complained of chest pain</p> <p>3 with exertion at any time on that day, May 6th, 2016,</p> <p>4 at any time?</p> <p>5 A. No, I'm not aware.</p> <p>6 Q. Thank you. Based upon your review, would you agree</p> <p>7 that the healthcare professionals caring for</p> <p>8 Mr. Dunigan believed that his chest pain was due to</p> <p>9 the fall he reported when he got off the bus and fell</p> <p>10 at 6:00 p.m. the evening before?</p> <p>11 A. No, I don't agree with that.</p> <p>12 Q. You think the healthcare providers thought his chest</p> <p>13 pain was caused by something else?</p> <p>14 A. I think that they thought it was caused by something</p> <p>15 else because they did not eliminate anything else in a</p> <p>16 patient with the underlying record that he has.</p> <p>17 Q. Based upon your review -- can you point me to any</p> <p>18 evidence which would indicate that any of the</p> <p>19 healthcare professionals involved with Mr. Dunigan's</p> <p>20 care actually thought that his chest pain was due to</p> <p>21 something other than the fall he had suffered?</p> <p>22 A. I cannot crawl into their minds, but I can tell you</p> <p>23 that no effort was made to find out what really caused</p> <p>24 his chest pain.</p> <p>25 Q. Can you, based upon your review, identify any evidence</p>

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<p style="text-align: right;">Page 45</p> <p>1 that Mr. Dunigan's condition was unstable at the time</p> <p>2 he was discharged from the Emergency Department?</p> <p>3 A. Evidence there was not that he was unstable. But if</p> <p>4 they had explored, they would have found out that it</p> <p>5 was unstable.</p> <p>6 Q. Is the answer to my question that you are not aware of</p> <p>7 any evidence indicating that Mr. Dunigan's condition</p> <p>8 was unstable as of the time he was discharged from the</p> <p>9 Emergency Department to the waiting room?</p> <p>10 A. Well, he was unstable even -- I mean you could argue</p> <p>11 that he was unstable because of the way he behaved in</p> <p>12 the waiting room once he was discharged from the</p> <p>13 emergency room. He was totally anxious. He was</p> <p>14 walking around with his cane. He was holding on to</p> <p>15 furniture and seats and his cane to walk around. Let</p> <p>16 me think of the word I am looking for. Yes, he was</p> <p>17 anxious. He was concerned. He was worried about his</p> <p>18 condition because the pain was not related to -- they</p> <p>19 ruled out -- the x-ray ruled out that he had any major</p> <p>20 condition in his chest. Even a broken rib was not</p> <p>21 found. Nothing was found that would indicate that he</p> <p>22 had chest pain because of an injury.</p> <p>23 Q. Do you believe that one can experience chest pain from</p> <p>24 a fall without breaking a rib?</p> <p>25 A. Of course you can, but here you have a patient who has</p>	<p style="text-align: right;">Page 47</p> <p>1 I gleaned from the records.</p> <p>2 But it doesn't make any difference whether</p> <p>3 this was the day or not because he got -- he had to</p> <p>4 have dialysis in order to clear his blood of the waste</p> <p>5 product that it normally has if he does not get</p> <p>6 dialysis.</p> <p>7 His life expectancy was governed by his</p> <p>8 kidneys and probably to some extent of his heart as</p> <p>9 well and diabetes and so on and so forth. But that is</p> <p>10 not -- I disagree, by the way, with the comment made</p> <p>11 on the death certificate that the drugs that he took</p> <p>12 were a contributing factor to his death. I don't</p> <p>13 believe that.</p> <p>14 Q. Doctor, do you think you are capable of answering the</p> <p>15 questions I ask?</p> <p>16 A. I answer you the best I can.</p> <p>17 Q. Here is my question: Have you done any research or</p> <p>18 reading which would allow you to offer an opinion as</p> <p>19 to the average life expectancy of a patient in end</p> <p>20 stage renal failure requiring dialysis?</p> <p>21 A. Between five and seven years.</p> <p>22 Q. Upon what do you base that opinion?</p> <p>23 A. On the statistics.</p> <p>24 Q. From where?</p> <p>25 A. I don't know from where to tell you right now, but I</p>
<p style="text-align: right;">Page 46</p> <p>1 a record of heart conditions, cardiovascular</p> <p>2 conditions, COPD, he is known to have diabetes, known</p> <p>3 to have manifestations on other occasions that point</p> <p>4 to his heart and breathing organs, like lungs and</p> <p>5 chest wall and so on. They knew what they are dealing</p> <p>6 with, but did they make use of that knowledge? No,</p> <p>7 they did not.</p> <p>8 Q. Did you do any research or online search or reading in</p> <p>9 order to prepare your opinions and provide your</p> <p>10 opinions in this case?</p> <p>11 A. I did a lot of reading. Not for this case, but I</p> <p>12 started my reading when I went to medical school.</p> <p>13 Q. Have you done any research specifically for your</p> <p>14 review and providing opinions in this case?</p> <p>15 A. No, not providing for this case, but providing for all</p> <p>16 kinds of other cases that have similar problems.</p> <p>17 Q. Have you done any reading or research as to the life</p> <p>18 expectancy of a patient with end stage renal disease</p> <p>19 on dialysis?</p> <p>20 A. Well, I do a lot of autopsies on these patients, so I</p> <p>21 get their records. The life expectancy of a dialysis</p> <p>22 patient is about seven years. This individual was on</p> <p>23 dialysis. In fact, I think that, if I'm not mistaken,</p> <p>24 this visit to the emergency room on May 6th was a</p> <p>25 Friday. So he got dialysis on Fridays. That is what</p>	<p style="text-align: right;">Page 48</p> <p>1 can always research where that comes from. But I have</p> <p>2 known that for a long time. There are documents</p> <p>3 issued by the life insurance companies, the major life</p> <p>4 insurance companies, and the CDC that gives you these</p> <p>5 kinds of estimates.</p> <p>6 Q. You have referred to statistics from life insurance</p> <p>7 companies in your report, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. You suggested that, based upon those statistics,</p> <p>10 someone of Mr. Dunigan's age could expect to live</p> <p>11 another 23 years?</p> <p>12 A. Yes. With compliance he stands the chance of that</p> <p>13 kind of longevity. He was not always compliant.</p> <p>14 Q. How do you reconcile the opinion you just gave, that a</p> <p>15 person with end stage renal disease on dialysis has a</p> <p>16 life expectancy of five to seven years, with your</p> <p>17 suggestion that Mr. Dunigan had a life expectancy of</p> <p>18 23 years?</p> <p>19 A. No. Well, first of all, when I wrote that, I was not</p> <p>20 aware that he was not always compliant. That is one</p> <p>21 factor at least. So I also did not know much about</p> <p>22 his general medical conditions. But I know now, and</p> <p>23 that is why I'm saying with compliance he probably</p> <p>24 stands a much better chance than the average person.</p> <p>25 Q. Okay. Let me ask this: The average life expectancy</p>

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<p style="text-align: right;">Page 49</p> <p>1 of patients in end stage renal disease on dialysis</p> <p>2 doesn't mean necessarily patients who are compliant or</p> <p>3 noncompliant, true?</p> <p>4 A. No. I'm assuming that he was not always compliant.</p> <p>5 That is what I know. What that assumes in regards to</p> <p>6 Mr. Dunigan I really don't know.</p> <p>7 Q. Is it fair to say you don't really know what his life</p> <p>8 expectancy would have been?</p> <p>9 A. No, I don't say that. I say that the average life</p> <p>10 expectancy may be five to seven years, but what was</p> <p>11 Mr. Dunigan's life expectancy requires some more</p> <p>12 inquiry. I don't know what it means that he was not</p> <p>13 always compliant. If he was compliant or not</p> <p>14 compliant, I would assume that the conditions</p> <p>15 indicated on the death certificate have been with him</p> <p>16 for years, and so when I read that and when I read the</p> <p>17 comments on the death certificate with regards to</p> <p>18 drugs, I tend to believe that he had a much better</p> <p>19 life expectancy than is maybe assumed at face value.</p> <p>20 Q. First of all, you would withdraw the opinion in your</p> <p>21 report of April 15th, 2017 that Mr. Dunigan was</p> <p>22 deprived of at least 23 years of life. You no longer</p> <p>23 hold that opinion, true?</p> <p>24 A. No, that is not really true. I don't know if it's in</p> <p>25 the 20-year level that his life expectancy would have</p>	<p style="text-align: right;">Page 51</p> <p>1 A. Not quite.</p> <p>2 Q. All right.</p> <p>3 A. In every -- is that a question? Because then I can</p> <p>4 answer.</p> <p>5 Q. Didn't you already tell me that a patient with end</p> <p>6 stage renal failure on dialysis has an average life</p> <p>7 expectancy of five to seven years?</p> <p>8 A. Yes, I did.</p> <p>9 Q. All right. Didn't Mr. Dunigan have end stage renal</p> <p>10 disease and required dialysis?</p> <p>11 A. Yes, he required dialysis or transplant.</p> <p>12 Q. That five- to seven-year life expectancy with patients</p> <p>13 on dialysis doesn't only apply to patients who are</p> <p>14 noncompliant, does it?</p> <p>15 A. I don't know what that is based on other than the</p> <p>16 statistics indicate that the life expectancy of</p> <p>17 individuals on dialysis, three times a week dialysis,</p> <p>18 would have on the average a life expectancy of five to</p> <p>19 seven years.</p> <p>20 Q. Okay. Mr. Dunigan was a patient with end stage renal</p> <p>21 disease requiring dialysis three times a week, true?</p> <p>22 A. I think it is. Usually it is three times a week</p> <p>23 because when the kidneys are shot like in this case,</p> <p>24 then he would need dialysis three times a week.</p> <p>25 Q. So isn't he the kind of patient, based on statistics,</p>
<p style="text-align: right;">Page 50</p> <p>1 been, but that may require some more research. But</p> <p>2 only the future really would really tell whether it</p> <p>3 was or was even an extent of that. But for right now</p> <p>4 I think I would consider that the life expectancy may</p> <p>5 have been as high as 23 years, but may not have been.</p> <p>6 I would like to know that he improved his lifestyle.</p> <p>7 I would like to know that he is under medical</p> <p>8 supervision, compliant as it is, and I would then make</p> <p>9 my opinion as to the veracity of that statement in my</p> <p>10 report.</p> <p>11 Q. But we don't have the benefit of knowing what would</p> <p>12 have happened in the future if he lived, do we?</p> <p>13 A. Well, I don't know what would have been -- what would</p> <p>14 have occurred if he had lived, but I'm not surprised</p> <p>15 that he died because nothing was done for this</p> <p>16 individual.</p> <p>17 Q. When you attempt to -- and you do believe you are</p> <p>18 qualified to offer opinions on life expectancy?</p> <p>19 A. Oh, yes, I am.</p> <p>20 Q. Okay. In every case where you are offering that</p> <p>21 opinion in a death case, the patient is already dead.</p> <p>22 You have to rely upon statistics and studies and</p> <p>23 reviews of past cases to determine the likely time a</p> <p>24 patient would be expected to live beyond their actual</p> <p>25 date of death, true?</p>	<p style="text-align: right;">Page 52</p> <p>1 that would be considered to have a five-to seven-year</p> <p>2 life expectancy?</p> <p>3 A. Not necessarily.</p> <p>4 Q. Why not?</p> <p>5 A. Well, how do I know? Maybe next week something comes</p> <p>6 out where he can get a transplant. How do I know</p> <p>7 that? And why not? Why is he not eligible for a</p> <p>8 transplant? A lot of kidneys floating around these</p> <p>9 days.</p> <p>10 Q. Do you know whether that average life expectancy of</p> <p>11 five to seven years with patients in end stage renal</p> <p>12 disease includes the whole range of patients from</p> <p>13 patients who are noncompliant to patients who get a</p> <p>14 transplant?</p> <p>15 A. No, no, no. That is not so. I'm aware of patients</p> <p>16 with transplanted kidneys who do very well, very well</p> <p>17 indeed.</p> <p>18 Q. But the average overall of a patient like Mr. Dunigan,</p> <p>19 a patient in end stage renal failure requiring</p> <p>20 dialysis, is five to seven years according to your</p> <p>21 opinion. It's actually shorter than that, but --</p> <p>22 A. No. My opinion is perfectly fine to consider the life</p> <p>23 expectancy in Mr. Dunigan, sorry, in this individual,</p> <p>24 is based on the maximum that he is likely to live,</p> <p>25 considering all his conditions, not just the kidneys.</p>

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<p>1 The kidneys are one item here, and the</p> <p>2 necessity of dialysis is not a given in anybody.</p> <p>3 There are a lot of people who now get kidneys who</p> <p>4 never even thought of the likelihood that they might</p> <p>5 get one. They are able to get kidneys. So I think</p> <p>6 that the likelihood of an individual like this is not</p> <p>7 necessarily carved in rock that he would not qualify.</p> <p>8 I don't know that. So if he qualifies, he stands a</p> <p>9 chance, and that would eliminate dialysis.</p> <p>10 Dialysis is not a nontraumatic event. So</p> <p>11 dialysis has its own perils, and if he does not need</p> <p>12 dialysis, he is way ahead.</p> <p>13 Q. So did you or did you not testify multiple times so</p> <p>14 far today that on average a patient with end stage</p> <p>15 renal disease on dialysis has a life expectancy of</p> <p>16 five to seven years?</p> <p>17 A. That may be, but that goes for each and every case</p> <p>18 separately. It's not uniform for all of them.</p> <p>19 Q. But you attempt to decide on life expectancy by taking</p> <p>20 those statistical averages and applying them to a</p> <p>21 particular patient, true?</p> <p>22 A. When the circumstantial evidence causes me to do that,</p> <p>23 I do. When it doesn't, I do that too. That is why my</p> <p>24 testimony is what it is.</p> <p>25 Q. That five- to seven-year average life expectancy you</p>	<p>1 A. Yes.</p> <p>2 Q. Are you aware of any evidence indicating that he still</p> <p>3 had obvious manifestations of serious illness --</p> <p>4 A. He had --</p> <p>5 Q. -- referred to in your report?</p> <p>6 A. I have answered that. I have answered that before. I</p> <p>7 am unaware of him having other conditions because</p> <p>8 nothing else was done to find out if he had other</p> <p>9 conditions except that the record in the record room</p> <p>10 is full of them, and nobody ever pulled them and</p> <p>11 studied them and knew what they say.</p> <p>12 Q. Are you aware of any evidence that Mr. Dunigan</p> <p>13 demonstrated any frothing at the mouth at any time</p> <p>14 before he was placed in the police vehicle?</p> <p>15 A. No, I'm not aware of it, that he was frothing at the</p> <p>16 mouth at the hospital, but he sure was frothing at the</p> <p>17 mouth in the vehicle because I heard it. Frothing at</p> <p>18 the mouth and snoring, that type of snoring which I</p> <p>19 can only hope I never hear again.</p> <p>20 Q. Please try and listen to my question, Doctor. At any</p> <p>21 time before Mr. Dunigan is placed in the police</p> <p>22 vehicle are you aware of any evidence indicating that</p> <p>23 he had frothing at the mouth or was experiencing air</p> <p>24 hunger, difficulty breathing or dyspnea?</p> <p>25 A. No. I said that. I said that I'm unaware of it, if</p>
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<p>1 referred to could be reduced by other comorbidities</p> <p>2 other than end stage renal disease, true?</p> <p>3 A. Well, it obviously did in this case, but it didn't</p> <p>4 have to.</p> <p>5 Q. So that five- to seven-year average that you are</p> <p>6 talking about would be reduced even further if a</p> <p>7 patient also had diabetes and coronary artery disease?</p> <p>8 A. He has had diabetes for a long time. He has had</p> <p>9 coronary artery for a long time. He had COPD for a</p> <p>10 long time. He had hypertension for a long time. Does</p> <p>11 that mean that he has to die necessarily without</p> <p>12 affording him the best possible medical treatment that</p> <p>13 America can provide? Because that could be me. Maybe</p> <p>14 I shouldn't say me, but that could be I.</p> <p>15 Q. Up to the time that Mr. Dunigan was wheeled into the</p> <p>16 waiting room are you aware of any evidence that he had</p> <p>17 an obvious manifestation of serious illness or that he</p> <p>18 was foaming at the mouth or that he was experiencing</p> <p>19 pulmonary edema or that he was having air hunger,</p> <p>20 difficulty breathing, dyspnea or fear of doom?</p> <p>21 A. I'm sorry. I don't know -- I'm losing track of the</p> <p>22 question. Would you be so kind to say it again?</p> <p>23 Q. I'm still on the time period up to the time he is</p> <p>24 discharged from the Emergency Department to the</p> <p>25 waiting room.</p>	<p>1 he had it before he left.</p> <p>2 Q. Are you aware of any evidence indicating that at any</p> <p>3 time after his initial presentation to the Emergency</p> <p>4 Department Mr. Dunigan ever asked for any medical care</p> <p>5 or medical attention?</p> <p>6 A. Before what?</p> <p>7 Q. At any time after his initial presentation.</p> <p>8 A. You mean on 5-6-2016 at 2:13? That is when he came to</p> <p>9 the hospital.</p> <p>10 Q. Let me try it this way: Let's go from the time he was</p> <p>11 discharged from the Emergency Department and wheeled</p> <p>12 into the waiting room. Do you understand where I am</p> <p>13 in the time sequence there?</p> <p>14 A. Well, I don't know that he asked for medical care, but</p> <p>15 he didn't want to leave. That is for sure. He</p> <p>16 certainly didn't want to leave the hospital. Why he</p> <p>17 didn't want to leave I can only speculate. I don't</p> <p>18 know why he didn't want to leave, but it's obvious</p> <p>19 that if you don't want to leave the hospital, you are</p> <p>20 looking for more medical care, but maybe I'm wrong.</p> <p>21 Q. Upon what do you base the claim you just made, that</p> <p>22 Mr. Dunigan did not want to leave the hospital?</p> <p>23 A. Well, the records all show that. He didn't want to</p> <p>24 go. He didn't want to be taken elsewhere. He asked</p> <p>25 to be taken -- I don't know why he wanted to go to</p>

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<p style="text-align: right;">Page 57</p> <p>1 jail, but maybe he had hopes that they would provide</p> <p>2 him with more medical care. I don't know. He did not</p> <p>3 want to leave Bronson because that is abundantly</p> <p>4 documented in the various depositions that I read.</p> <p>5 Q. Are you aware of any evidence indicating that</p> <p>6 Mr. Dunigan ever complained of a medical problem or</p> <p>7 asked for medical care after he was wheeled into the</p> <p>8 waiting room?</p> <p>9 A. I'm unaware whether he asked for additional medical</p> <p>10 care. Maybe he didn't know that there was such</p> <p>11 available, but it's obvious that that is what he</p> <p>12 needed. Many times in my -- to my knowledge, patients</p> <p>13 don't know that they can get medical care for whatever</p> <p>14 they have, an ailment or a condition. They may not</p> <p>15 know. He may not have known that he should -- he has</p> <p>16 to ask for medical care. I really don't know that.</p> <p>17 But the fact is that he wasn't given that</p> <p>18 choice. He wasn't asked to come back in the room, in</p> <p>19 the emergency room. When he was seen walking around</p> <p>20 aimlessly holding on to furniture, obviously something</p> <p>21 is wrong with this man. So as a doctor, you would</p> <p>22 kind of frown that somebody, a nurse or a health</p> <p>23 provider, would not point out to the physician in the</p> <p>24 emergency room or other personnel that there is</p> <p>25 something wrong with that patient that should be</p>	<p style="text-align: right;">Page 59</p> <p>1 at Bronson saw Mr. Dunigan in a condition that</p> <p>2 indicated he needed medical attention after he was</p> <p>3 discharged to the waiting room?</p> <p>4 A. No, I'm not aware.</p> <p>5 Q. Thank you. What is your understanding of</p> <p>6 Mr. Dunigan's ability to ambulate prior to the time he</p> <p>7 fell getting off the bus on May 5th?</p> <p>8 A. I don't know what his walking -- I have no idea what</p> <p>9 his condition caused him to -- by way of ability to</p> <p>10 walk. I can't imagine that it did anything other</p> <p>11 than -- the heart condition that he had is likely to</p> <p>12 have caused him pain from walking, from exerting, from</p> <p>13 being exerted. But I don't know where I would have</p> <p>14 found that, that what happened on the day before, on</p> <p>15 the day before he went to Bronson. But stress is not</p> <p>16 exactly a good thing for somebody with that kind of</p> <p>17 heart condition that Mr. Dunigan had.</p> <p>18 Q. Based upon your review of everything you have seen in</p> <p>19 this case are you aware that Mr. Dunigan had a history</p> <p>20 of a stroke with hemiparesis?</p> <p>21 A. He had some difficulty walking because of that stroke</p> <p>22 because one side was weaker than the other, but</p> <p>23 whether they really interfered with his ability to</p> <p>24 walk with a cane I am not aware.</p> <p>25 Q. We are back to that. You don't know what his ability</p>
<p style="text-align: right;">Page 58</p> <p>1 explored. But nothing like that ever happened. The</p> <p>2 one thing that was done was an x-ray, which excluded</p> <p>3 trauma.</p> <p>4 Q. I'm becoming convinced that you are not capable of</p> <p>5 answering my questions, Doctor. But I'm just going to</p> <p>6 keep asking them.</p> <p>7 A. Go ahead.</p> <p>8 Q. I'm going to have to ask the same one again. Are you</p> <p>9 aware of any evidence indicating that Mr. Dunigan ever</p> <p>10 asked for any type of medical care after he went to</p> <p>11 the waiting room?</p> <p>12 A. I've already answered that. I said no, I'm not.</p> <p>13 Q. Thank you. Please stop there. Are you aware of any</p> <p>14 evidence that any physician or nurse saw any behavior</p> <p>15 in Mr. Dunigan which indicated that he needed medical</p> <p>16 attention?</p> <p>17 A. Any nurse?</p> <p>18 MR. DAWSON: After he was discharged from</p> <p>19 the ED?</p> <p>20 MR. O'LOUGHLIN: Correct.</p> <p>21 MR. DAWSON: Go ahead, Doctor.</p> <p>22 A. Any nurse at Bronson or any doctor at Bronson, or am I</p> <p>23 included in that too, because I saw him.</p> <p>24 BY MR. O'LOUGHLIN:</p> <p>25 Q. Are you aware of any evidence that any nurse or doctor</p>	<p style="text-align: right;">Page 60</p> <p>1 was to walk or ambulate with or without a cane prior</p> <p>2 to May 6th, 2016, true?</p> <p>3 A. No. I think with a cane he was able to walk. Maybe</p> <p>4 not as well as he did before he had the stroke, but he</p> <p>5 walked with a cane, or was able to walk with a cane.</p> <p>6 I can see him walk in the waiting room.</p> <p>7 Q. Do you know whether he was able to walk any better</p> <p>8 than he was when you saw him in the waiting room on</p> <p>9 the day before?</p> <p>10 A. I don't know how he was walking the day before, but in</p> <p>11 general he was able to walk. He was able to walk even</p> <p>12 on May 6th because that is when I saw him.</p> <p>13 Q. Did you say was or wasn't?</p> <p>14 A. Was. He was walking okay. He was walking. He was</p> <p>15 holding on to furniture, but that is explainable by</p> <p>16 his condition on that day, because on the 6th he was</p> <p>17 different than on -- he may have been different than</p> <p>18 on May 5th.</p> <p>19 Q. You don't know one way or the other, true?</p> <p>20 A. I know how he behaved on May 6th. I'm not so sure</p> <p>21 whether that applies to May 5th as well.</p> <p>22 Q. That is the point of my question, Doctor. Do you know</p> <p>23 whether his ability to ambulate as you saw it on May</p> <p>24 6th in the waiting room was any different than his</p> <p>25 ability to ambulate on May 5th before he fell getting</p>

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<p style="text-align: right;">Page 61</p> <p>1 off the bus?</p> <p>2 A. I just said that I do not know.</p> <p>3 Q. All right. Thank you. In your report you claim that</p> <p>4 Mr. Dunigan was discharged from the ER at 4:30 a.m.</p> <p>5 and that he was still in severe pain with obvious</p> <p>6 manifestations of serious illness.</p> <p>7 A. Yes.</p> <p>8 Q. What are you referring to in that claim as obvious</p> <p>9 manifestations of serious illness or an indication</p> <p>10 that he was still in severe pain?</p> <p>11 A. Well, his breathing, his froth, his behavior when he</p> <p>12 was trying to lie down and they didn't let him. They</p> <p>13 wanted him to sit up, and he couldn't maintain</p> <p>14 balance. All these things clearly indicate that he</p> <p>15 was not in a very good health condition.</p> <p>16 Q. You saw some difficulty breathing while he was in the</p> <p>17 waiting room?</p> <p>18 A. He didn't snore for nothing. That is a difficulty</p> <p>19 breathing. That is fluid, edema fluid, going up and</p> <p>20 down in his airways.</p> <p>21 Q. Are you now referring to the time when he was in the</p> <p>22 police vehicle?</p> <p>23 A. That is what you asked.</p> <p>24 Q. No. I asked in the waiting room.</p> <p>25 A. Well, that was not my impression.</p>	<p style="text-align: right;">Page 63</p> <p>1 life expectancy.</p> <p>2 Q. Okay. Let's talk about my question, which if you will</p> <p>3 recall, was specifically up to the time he was in the</p> <p>4 police vehicle. Do you recall that?</p> <p>5 A. Well, I interpreted that to mean --</p> <p>6 Q. Do you recall that or not?</p> <p>7 A. I interpreted that question to mean in the police</p> <p>8 vehicle.</p> <p>9 Q. Okay. So when I said between the time he was wheeled</p> <p>10 into the waiting room up to the time he was placed in</p> <p>11 the police vehicle, you thought that included the time</p> <p>12 after he was placed in the police vehicle?</p> <p>13 A. Not after, but in the police vehicle.</p> <p>14 Q. All right. Now, let me try and specify the parameters</p> <p>15 so we can get a straight answer. From the time</p> <p>16 Mr. Dunigan was wheeled into the waiting room after</p> <p>17 being discharged from the Emergency Department up</p> <p>18 until the time he is placed in the police car, but not</p> <p>19 including the time after he is placed in the police</p> <p>20 car, are you aware of any evidence that he exhibited</p> <p>21 severe pain or obvious manifestations of a serious</p> <p>22 illness?</p> <p>23 A. Well, yes, I am. I mean why would somebody in the</p> <p>24 room -- in the waiting room walk around holding on to</p> <p>25 the chairs and benches and using his cane? Why would</p>
<p style="text-align: right;">Page 62</p> <p>1 Q. That period of time. Let's go from the time that he</p> <p>2 is wheeled into the waiting room until the time he is</p> <p>3 in the police vehicle. Are you aware of any</p> <p>4 indication that he was still in severe pain or had</p> <p>5 obvious manifestations of a serious illness?</p> <p>6 A. In the waiting room I did not hear him snore like</p> <p>7 that, although he may have. I did not hear it. In</p> <p>8 the police vehicle I heard it personally. So</p> <p>9 therefore, I'm fully aware that he was in a state of</p> <p>10 air hunger at that time. Air hunger is horrible. Air</p> <p>11 hunger is equivalent to fear of doom and fear of</p> <p>12 death.</p> <p>13 So having said that, the rest of the</p> <p>14 behavior in the police car where he couldn't sit up</p> <p>15 but constantly fell to the side where he would lie</p> <p>16 down, but they didn't let him, they sat him up by</p> <p>17 force. So that is also a manifestation of severe</p> <p>18 illness because normally people sit. They don't lie</p> <p>19 down in a vehicle unless they are in some condition</p> <p>20 that makes it imperative that they lie down.</p> <p>21 And then the foam at the mouth that the</p> <p>22 police officer who saw it, I did not personally see</p> <p>23 it, but he pointed to my attention of froth at the</p> <p>24 mouth when he said so. So I can only put all this</p> <p>25 under one umbrella, and that means bad health, short</p>	<p style="text-align: right;">Page 64</p> <p>1 they do that if they are in such good health? So</p> <p>2 having said that, he obviously had something happening</p> <p>3 to him that was not indicative of great health at that</p> <p>4 time. So that is really all I can tell you.</p> <p>5 Otherwise, I did not see him or hear him</p> <p>6 breathe. I did not see or hear him have foam around</p> <p>7 his mouth. But I base my opinion on his demeanor in</p> <p>8 the waiting room where he was anxious, did not sit</p> <p>9 down in spite of pain that he had because he came</p> <p>10 there with pain. Nothing was done to alleviate pain.</p> <p>11 So therefore, he still had it.</p> <p>12 Q. Is it fair to say that the only evidence you can point</p> <p>13 to indicating that Mr. Dunigan was still in severe</p> <p>14 pain or had obvious manifestations of a serious</p> <p>15 illness is what you saw on the video from the waiting</p> <p>16 room?</p> <p>17 A. What happened in the waiting room is what I saw on the</p> <p>18 pictures of what he did in the waiting room.</p> <p>19 Q. All right. What you just said, I believe, was that</p> <p>20 the only evidence you can point to to support that</p> <p>21 claim is the way he was moving around the waiting</p> <p>22 room?</p> <p>23 A. He was moving around. He was walking. He was trying</p> <p>24 to walk with a cane. He was holding on to the</p> <p>25 furniture. He was trying to lie down at some time and</p>

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<p style="text-align: right;">Page 65</p> <p>1 then got up suddenly again and moved around again. He</p> <p>2 was anxious. That is what he was. That is called</p> <p>3 exertion. That is called stress. That is called</p> <p>4 agitation. That is called an underlying health</p> <p>5 condition.</p> <p>6 Q. Did you earlier testify that you didn't know whether</p> <p>7 the way that Mr. Dunigan moved around the waiting room</p> <p>8 was any different than the way he moved the day</p> <p>9 before?</p> <p>10 A. I don't know how he moved the day before. I'm saying</p> <p>11 that again. But how he moved in the waiting room is</p> <p>12 clearly indicated on the pictures, on the video.</p> <p>13 Q. It is. It is. Is there anything about the way he</p> <p>14 moved that you can say would be different if he had</p> <p>15 been in the waiting room the day before, before he</p> <p>16 fell from the bus?</p> <p>17 A. I don't know what your question is, sir. I'm sorry,</p> <p>18 but I don't understand your questions. They are a</p> <p>19 little bit convoluted for me.</p> <p>20 Q. Okay. Let's try one that is not. You have in your</p> <p>21 report, first paragraph, second page, "Despite</p> <p>22 Mr. Dunigan's appearance and complaints of pain and</p> <p>23 his worsening condition," and again, that is the</p> <p>24 paragraph that refers to 4:30, after he was discharged</p> <p>25 to the waiting room. What evidence do you have that</p>	<p style="text-align: right;">Page 67</p> <p>1 somebody in distress. So in a hospital, in a medical</p> <p>2 environment, is it likely that somebody may have seen</p> <p>3 him? Well, I don't know how likely it is, but people</p> <p>4 walk around, nurses, healthcare personnel. So chances</p> <p>5 are, more likely than not, that somebody would have</p> <p>6 seen him. His doctor that he saw at 2:13 was also</p> <p>7 around. Other than that, I cannot answer that. That</p> <p>8 is my answer.</p> <p>9 Q. Well, okay. The paragraph I read referred to 4:30</p> <p>10 after he was discharged to the waiting room. Did you</p> <p>11 understand that?</p> <p>12 A. After he was discharged from the waiting room all I</p> <p>13 have is what the police tell me, and then there was</p> <p>14 also some pictures that I saw which depict</p> <p>15 Mr. Dunigan, but were they enough for me to make a</p> <p>16 diagnosis? No. So I'm not even referring to those</p> <p>17 pictures.</p> <p>18 But the fact is that there were police</p> <p>19 around. They also were aware about what he was doing</p> <p>20 and not believing him and all this is fake and so on.</p> <p>21 Q. Doctor, all right. After he was discharged from the</p> <p>22 waiting room and before he was placed in the police</p> <p>23 car are you aware of any evidence indicating that he</p> <p>24 complained of pain?</p> <p>25 A. I don't know if he complained. I didn't hear him.</p>
<p style="text-align: right;">Page 66</p> <p>1 Mr. Dunigan ever complained of pain after he was</p> <p>2 discharged to the waiting room?</p> <p>3 A. I don't know. Maybe he did have. Maybe he didn't. I</p> <p>4 don't know. I don't know the answer.</p> <p>5 Q. Why did you put it in your report?</p> <p>6 A. Well, what did I put in the report? Could you read me</p> <p>7 what I put?</p> <p>8 Q. Yes. You have, "At about 4:30 a.m. Dunigan was</p> <p>9 discharged from the ER and waited in the lobby at the</p> <p>10 hospital still in severe pain and obvious</p> <p>11 manifestations of serious illness. Despite Dunigan's</p> <p>12 appearance and complaints of pain and his worsening</p> <p>13 condition, Bronson personnel approved his release from</p> <p>14 the hospital."</p> <p>15 A. He came to the hospital with pain, with severe pain,</p> <p>16 in an ambulance. Nothing was ever done with him to</p> <p>17 alleviate that pain. So why would there suddenly be</p> <p>18 no pain? When he walks around in the waiting room, he</p> <p>19 is walking with difficulty. He is holding on to the</p> <p>20 furniture. He is walking with a cane. He is trying</p> <p>21 to lie down. He gets up after a minute or two and</p> <p>22 walks around again. He is anxious. He is worried.</p> <p>23 He is in a state of stress at that time. So whether</p> <p>24 he complained to anybody, I have no idea.</p> <p>25 But people watch like I do, and they see</p>	<p style="text-align: right;">Page 68</p> <p>1 All I know is what I can substantiate, and what I can</p> <p>2 substantiate I already said several times.</p> <p>3 Q. Would you put something in your report that you could</p> <p>4 not substantiate?</p> <p>5 A. I put something in my report that I could not</p> <p>6 substantiate? Is that what your question is?</p> <p>7 Q. Yes. Would you?</p> <p>8 A. I don't know. What I put in my report is clearly</p> <p>9 written down and in black and white, so --</p> <p>10 Q. What you put in your report was that, "Despite</p> <p>11 Mr. Dunigan's appearance and complaints of pain and</p> <p>12 his worsening condition Bronson personnel approved his</p> <p>13 release from the hospital."</p> <p>14 What I'm trying to find out is whether you</p> <p>15 have any evidence indicating that he complained of</p> <p>16 pain at any time after he was wheeled to the waiting</p> <p>17 room.</p> <p>18 A. That is obvious that he complained of pain because he</p> <p>19 came to the hospital because of it. That is why he</p> <p>20 summoned an ambulance. Did he not tell the ambulance</p> <p>21 why he is going to the hospital and not to the movies?</p> <p>22 Q. Apparently you didn't hear my question. Let me try it</p> <p>23 again. I'm talking about the time period after he was</p> <p>24 discharged from the Emergency Department to the</p> <p>25 waiting room, which is the time referred to in your</p>

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<p style="text-align: right;">Page 69</p> <p>1 paragraph that starts, "At about 4:30." Do you 2 understand the timeframe I'm talking about? 3 A. After 4:30. Is that what you are -- after 4:30. 4 Q. Are you aware of any evidence that Mr. Dunigan ever 5 complained of pain or a worsening condition after 6 4:30? 7 A. No, I'm not. I'm not aware that he complained to the 8 police, because they are the ones that were outside 9 with him, that he complained to them about pain. But 10 I think that that would have fallen on deaf ears if he 11 did. They are the ones who charged him with faking to 12 begin with. 13 Q. Do you hear my question? 14 A. Yes, I hear your question. 15 Q. Then please answer it. 16 A. I told you that I have no knowledge. I would not talk 17 to the police either because they are the ones that 18 ran him into the ground. They are the ones that 19 claimed that he was faking, and that occurred in fact 20 all the time. 21 Q. Are you aware of any evidence indicating that any 22 Bronson security officer or other Bronson employee or 23 any police officer didn't think that Mr. Dunigan was 24 faking? 25 A. I don't know. I did not talk to them about it. I am</p>	<p style="text-align: right;">Page 71</p> <p>1 indicated that he had a medical problem? 2 MR. DAWSON: Objection, form of the 3 question. When? 4 A. I'm not aware of that statement in relationship to 5 that visit on May 6th. 6 BY MR. O'LOUGHLIN: 7 Q. If that was the testimony of the security officers and 8 the police officers, are you aware of any evidence 9 that would contradict their testimony that Mr. Dunigan 10 never indicated he had a medical problem? 11 A. No, I'm not aware. 12 Q. If they also testified that Mr. Dunigan never asked 13 for medical care or asked to be seen by any healthcare 14 provider after the time he was discharged to the 15 waiting room, would you be able to point to any 16 evidence that would contradict that testimony? 17 A. Yes, I think I would, because he started snoring and 18 frothing at the mouth as soon as he was put in the 19 police vehicle. The pulmonary edema did not just 20 suddenly occur. The pulmonary edema took time to 21 develop. The frothing needed time to mix air with 22 fluid as a result of breathing, so that took time as 23 well. How much time? Fairly long time. All this 24 must have, by necessity, have started before he even 25 went into the vehicle. This did not just suddenly</p>
<p style="text-align: right;">Page 70</p> <p>1 aware that that is their conversation among each 2 other. That is what I heard. 3 Q. I think I got this, but I will tell you it's getting 4 hard to tell. At any time up until Mr. Dunigan was 5 placed in the police car are you aware of any evidence 6 that he was experiencing air hunger, difficulty 7 breathing, dyspnea or fear of doom? 8 A. Yes, that is my opinion. That is correct. Nothing 9 was done for Mr. Dunigan from 2:13 until -- or to 10 alleviate pain and stress and fear. Nothing was done 11 except an x-ray was done, which did nothing. 12 Q. What evidence up to the time Mr. Dunigan was placed in 13 the police car are you aware of that indicated he was 14 having difficulty breathing, air hunger, dyspnea or 15 fear of doom? 16 A. His behavior in the waiting room. 17 Q. What about that behavior indicated any of those 18 things? 19 A. I have already said that, and I think that the time 20 will come when I will not say it again. I have said 21 it now I don't know how many times. I really refuse 22 to answer that again, so please ask me another 23 question. 24 Q. Did you read in testimony from the security officers 25 and the police their statements that Mr. Dunigan never</p>	<p style="text-align: right;">Page 72</p> <p>1 develop out of the blue. Consequently, it is one 2 thing to lie down, which already is visible on the 3 video in the waiting room. Why should it now be 4 different? So it didn't suddenly disappear. 5 Therefore, it had to go on. 6 Q. Let's try my question. If the security officers and 7 police officers testified that Mr. Dunigan never asked 8 for medical care, never asked to be seen by a 9 healthcare professional, are you aware of any evidence 10 contraindicating that testimony? 11 A. No, he may not have. He may not have. I answered 12 that before too. He may not have because he 13 doesn't -- he doesn't need some more comments about 14 oh, I know about him faking. I know about that. I 15 have seen that well before many times. 16 When you hear that kind of comment, you 17 don't want to talk to those people. 18 Q. I'm just going to keep asking, Doctor, because you 19 seem incapable of -- 20 A. I told you before I did not hear that. I wasn't 21 present at the time that he was in the emergency room, 22 in the waiting room, on the curb, in the police car. 23 I wasn't there. I'm basing my opinion only on what I 24 read. What I read is not very complimentary to the 25 police and to the hospital.</p>

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<p style="text-align: right;">Page 73</p> <p>1 Q. And what you have read and reviewed and everything you 2 know about this case does not allow you to point to 3 any evidence indicating that Mr. Dunigan ever asked 4 for any medical care or attention after the time he 5 was wheeled to the waiting room, true?</p> <p>6 A. He never asked. He may have talked to the doctor who 7 saw him in the emergency room because he had to tell 8 him something. He would have asked him why are you 9 here. Then he would have told them. So we know that. 10 I forget the name of that doctor. It's an M.D. 11 physician who saw him in the emergency room and who 12 gave a deposition. Other than that I don't know 13 anything. I only base my opinions on the evidence 14 that I read.</p> <p>15 MR. O'LOUGHLIN: If you would read back my 16 question, please.</p> <p>17 (The requested portion of the record was 18 read by the reporter at 5:00 p.m.)</p> <p>19 "Q. And what you have read and reviewed 20 and everything you know about this case 21 does not allow you to point to any evidence 22 indicating that Mr. Dunigan ever asked for 23 any medical care or attention after the 24 time he was wheeled to the waiting room, 25 true?"</p>	<p style="text-align: right;">Page 75</p> <p>1 indicates that a myocardial infarct is likely to be in 2 the making. By the way, the left anterior descending 3 coronary artery is also called the widow maker.</p> <p>4 Q. That's cute too. Did I ask anything about that, 5 Doctor? Just let me ask my question, please. After 6 hours what microscopic changes of a myocardial 7 infarction would you expect to see at autopsy?</p> <p>8 A. Myocardial fibers being -- beginning to be necrotic, 9 and you may expect some neutrophils to be scattered 10 around the same area.</p> <p>11 Q. Does this autopsy report indicate such findings?</p> <p>12 A. No, it does not. I told you it requires hours for 13 that to occur.</p> <p>14 Q. Hours of what, hours of infarction?</p> <p>15 A. Hours of a clock.</p> <p>16 Q. Do you have any knowledge that would tell you whether 17 a patient can have ischemic chest pain for more than 18 an hour and not have infarction?</p> <p>19 A. Say that again.</p> <p>20 Q. Are you aware, based upon your medical knowledge, that 21 if a patient has ischemic chest pain for more than an 22 hour, that, by definition, has to result in 23 infarction?</p> <p>24 A. No, that is not true.</p> <p>25 Q. How many hours does it take for contraction band</p>
<p style="text-align: right;">Page 74</p> <p>1 A. Yes, I have answered that. I have answered it that I 2 did not hear it, but I wouldn't talk to those people 3 that you indicated or asked me about whether I heard 4 him talk to them. I would not be surprised if he 5 didn't tell them anything.</p> <p>6 BY MR. O'LOUGHLIN:</p> <p>7 Q. At autopsy, the postmortem examinations, are there 8 findings which would be indicative of a recent 9 myocardial infarction?</p> <p>10 A. Yes. Well, no, there is not a myocardial infarction 11 per se because myocardial infarctions take hours to be 12 manifested even under the microscope. So there are 13 manifestations of 99 percent occlusions, stenosis, of 14 two major coronary arteries.</p> <p>15 Q. Are there findings on microscopic postmortem 16 examinations of the heart muscle that are indicative 17 of a recent myocardial infarction?</p> <p>18 A. I would prefer if I could answer that question after I 19 have reviewed the microscopic slides, but I have not. 20 The answer to that question I gave you before where I 21 said it requires hours for a myocardial infarction to 22 make microscopic manifestations to allow 23 identification of a myocardial infarct. But the 99 24 percent stenosis of the passage in two major coronary 25 arteries indicates a very lousy blood flow, which</p>	<p style="text-align: right;">Page 76</p> <p>1 necrosis and neutrophils, as you referred to, to 2 appear on autopsy?</p> <p>3 A. How long it takes for a myocardial infarct to be 4 identifiable microscopically? Is that your question?</p> <p>5 Q. I will start with that. Sure.</p> <p>6 A. Several hours. Four or five hours.</p> <p>7 Q. Which is it? Several or four or five?</p> <p>8 A. Well, sometimes it takes four. Sometimes it takes 9 five. Sometimes it takes five and-a-half, and 10 sometimes it takes three and-a-half. So it doesn't 11 always do the same thing, but the average in my 12 personal experience is four to five hours.</p> <p>13 Q. Are you aware that upon presentation to the Emergency 14 Department Mr. Dunigan had a history of chest pain for 15 eight hours?</p> <p>16 A. He may have had 25 hours, but he may not have had a 17 myocardial infarct at the instant of the pain 18 starting. Lots of people have bad coronary arteries 19 and never develop a myocardial infarct. But the 20 coronary arteries supply the heart muscle with blood, 21 cause the arrhythmia and death.</p> <p>22 Q. And Mr. Dunigan was at risk for an arrhythmia and a 23 sudden cardiac death at any time, including even the 24 day before he was seen in the Emergency Department, 25 true?</p>

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<p style="text-align: right;">Page 77</p> <p>1 A. Mr. Dunigan was at risk for myocardial infarct for</p> <p>2 years to have the changes that he had with scars and</p> <p>3 fibrosis in the heart muscle, but he didn't die until</p> <p>4 he came to the emergency room on the 6th -- on May</p> <p>5 6th, 2016.</p> <p>6 Q. By the way, are you critical in any way of the manner</p> <p>7 of performance or the conclusions reached in the</p> <p>8 autopsy report of Dr. Douglas?</p> <p>9 A. No. I never gave that a thought. It's an autopsy</p> <p>10 report. I don't take this with a grain of salt. I do</p> <p>11 take with a grain of salt what she puts in the death</p> <p>12 certificate, but that is not the autopsy report. You</p> <p>13 didn't ask that.</p> <p>14 Q. But I am now asking about your opinion of the autopsy</p> <p>15 report, which I believe is the only thing you have</p> <p>16 expert qualifications to comment on.</p> <p>17 MR. DAWSON: Well, let me object to your</p> <p>18 commentary. Why don't you just ask a question?</p> <p>19 A. I take exception to that comment of yours because I</p> <p>20 wrote about, what, 60,000, maybe 70,000 death</p> <p>21 certificates myself. Do you think I can do that?</p> <p>22 BY MR. O'LOUGHLIN:</p> <p>23 Q. My question is as to the autopsy report in this case.</p> <p>24 Do you have any criticisms of the manner in which the</p> <p>25 autopsy was performed or its conclusion?</p>	<p style="text-align: right;">Page 79</p> <p>1 where she says cocaine or even BE in that list of the</p> <p>2 illegal drugs.</p> <p>3 Q. First of all, are you aware that Mr. Dunigan gave a</p> <p>4 history of using marijuana and cocaine 14 times a</p> <p>5 week?</p> <p>6 A. I'm aware of that, sir, but I'm talking about the</p> <p>7 death certificate. That is another question that you</p> <p>8 asked me now. My answer to that is that is not what I</p> <p>9 referred to originally. I am unaware of there being</p> <p>10 any illegal drug in his system in that list of drugs</p> <p>11 on the death certificate.</p> <p>12 Q. To your knowledge, did Mr. Dunigan have any</p> <p>13 prescription for opiates?</p> <p>14 A. I don't know if he did or not, but my not knowing is</p> <p>15 that Hydrocodone is a prescription medication. But</p> <p>16 it's not illegal. It must not be illegal.</p> <p>17 Q. Do you know whether Mr. Dunigan had a prescription for</p> <p>18 any medication that would leave cocaine metabolites in</p> <p>19 his system?</p> <p>20 A. I don't know. He probably did not, but I don't know</p> <p>21 if he did or not. He may have had cocaine. Maybe</p> <p>22 somebody slipped it to him. But BE is a metabolite,</p> <p>23 not a drug. It's a metabolite of cocaine.</p> <p>24 Q. Do you know whether Mr. Dunigan had a prescription for</p> <p>25 Fentanyl?</p>
<p style="text-align: right;">Page 78</p> <p>1 A. I don't really take any exception with the -- I don't</p> <p>2 have any quarrel with the autopsy report.</p> <p>3 Q. What is your quarrel with what is on the death</p> <p>4 certificate?</p> <p>5 A. On the death certificate she puts that two minutes of</p> <p>6 interval between the onset and the manifestations,</p> <p>7 that is one thing, for each and every diagnosis. Then</p> <p>8 she puts there is illegal drugs in the blood of</p> <p>9 Mr. Dunigan, and that is really unsupportable because</p> <p>10 there is no illegal drugs. Which drugs are those?</p> <p>11 Q. I'm not sure I understand your opinion. Are you</p> <p>12 claiming that Mr. Dunigan did not have illegal drugs</p> <p>13 in his system?</p> <p>14 A. I'm not aware of. Which are the illegal drugs?</p> <p>15 Q. Did he have metabolites of cocaine?</p> <p>16 A. That is not a drug now. That is a metabolite. You</p> <p>17 don't go to the pharmacy and ask for BE or</p> <p>18 benzoylecgonine. I wonder what they are going to give</p> <p>19 you.</p> <p>20 Q. You don't dispute that Mr. Dunigan was a drug abuser,</p> <p>21 do you?</p> <p>22 A. I don't go into all that research, sir. I'm saying</p> <p>23 there is no illegal drug in his system.</p> <p>24 Q. I'm sorry, Doctor. First of all --</p> <p>25 A. Among the illegal drugs she does not -- I don't see</p>	<p style="text-align: right;">Page 80</p> <p>1 A. I don't know, but it's a prescription medication.</p> <p>2 Q. But if he took it and he didn't have a prescription</p> <p>3 for it, that would be illegal, true?</p> <p>4 A. You know, I don't know where he got it, so am I going</p> <p>5 to make him an addict of Fentanyl just because he</p> <p>6 could have taken it without a prescription?</p> <p>7 Q. Why do you have qualms with the fact that the death</p> <p>8 certificate says that he has illegal drugs in his</p> <p>9 system?</p> <p>10 A. Because they are legal.</p> <p>11 Q. Any other disagreements with the death certificate or</p> <p>12 the autopsy report?</p> <p>13 A. No. Maybe I should read the death certificate a few</p> <p>14 more times. I don't know. I don't think so.</p> <p>15 May I ask you how much longer you are going</p> <p>16 to be?</p> <p>17 Q. I think I will pass the witness. If you want to take</p> <p>18 a break, we can do that.</p> <p>19 A. No. I would like to finish the deposition. That is</p> <p>20 important to me, but that is up to you to tell me that</p> <p>21 you are done. If you say you pass the witness, that</p> <p>22 tells me that you are finished.</p> <p>23 MR. DAWSON: There is another lawyer,</p> <p>24 Doctor.</p> <p>25</p>

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<p style="text-align: right;">Page 81</p> <p>1 BY MR. O'LOUGHLIN:</p> <p>2 Q. That means the other attorney here gets to ask you</p> <p>3 some questions.</p> <p>4 A. Okay.</p> <p style="text-align: center;">EXAMINATION</p> <p>6 BY MR. VANDERLAAN:</p> <p>7 Q. Dr. Spitz, my name is Allan VanderLaan. I simply want</p> <p>8 to concentrate on one aspect of your report. You</p> <p>9 indicate in the third paragraph, the second page -- I</p> <p>10 don't think you have your report with you. Let me</p> <p>11 read it. "There can be no greater pain than the fear</p> <p>12 of imminent death."</p> <p>13 Would you agree with me that that is a</p> <p>14 personal opinion as opposed to an expert one?</p> <p>15 A. No, I don't agree with you.</p> <p>16 Q. Would you agree with me that reasonable experts could</p> <p>17 disagree on that statement?</p> <p>18 A. I don't know what reasonable experts do, but I can</p> <p>19 tell you that you only die one time. If you don't --</p> <p>20 Q. Doctor, Doctor, stop. We want to get out of here.</p> <p>21 Just stop. Would you agree with me that there are a</p> <p>22 number of psychologists or psychiatrists or religious</p> <p>23 scholars that would disagree with that statement, that</p> <p>24 there can be no greater pain than the fear of imminent</p> <p>25 death?</p>	<p style="text-align: right;">Page 83</p> <p>1 time all day, but I disagree with that --</p> <p>2 Q. Tell me again --</p> <p>3 A. -- because I cherish life. I love life. I would like</p> <p>4 to be in a position where, because of all the people</p> <p>5 that I have followed to the good Lord, I would like to</p> <p>6 be allowed to be put in for an extension when my time</p> <p>7 comes. Having said that, thank you very much.</p> <p>8 Q. I respect your opinion, Doctor. But tell me, based</p> <p>9 upon your expertise, what allows you to make that</p> <p>10 particular statement, that there is no -- there can be</p> <p>11 no greater pain than the fear of imminent death?</p> <p>12 A. Because of my profession, because of my religion,</p> <p>13 because of my being the happiest person in the world</p> <p>14 when I wake up in the morning and I see the sunrise,</p> <p>15 especially yesterday because it was a magnificent view</p> <p>16 out of my bedroom window over the lake. I'm telling</p> <p>17 you it was a sight to behold.</p> <p>18 As long as I am around -- I'm 91 years old.</p> <p>19 I enjoy every minute. So is it just as good to die?</p> <p>20 No, sir, it is not.</p> <p>21 Q. Doctor, how would that -- how would that disagree with</p> <p>22 my reasonable position that, based upon my profession,</p> <p>23 my religion, my getting up in the morning and looking</p> <p>24 at a beautiful sunrise and saying to the good Lord I</p> <p>25 don't fear death? Why wouldn't that be reasonable?</p>
<p style="text-align: right;">Page 82</p> <p>1 A. I don't know what these people believe. I have no</p> <p>2 idea. So I can tell you that this guy here that is</p> <p>3 sitting and giving this deposition does not agree with</p> <p>4 those people who think that dying is a pleasure.</p> <p>5 Q. Doctor, if this fellow here speaking were to tell you</p> <p>6 that based upon his religious faith, that he would</p> <p>7 absolutely disagree that there is no greater pain than</p> <p>8 the fear of imminent death because his faith system</p> <p>9 allows him to believe that there is something beyond</p> <p>10 that, so he has no fear, which I don't, of imminent</p> <p>11 death, would you view that as an unreasonable</p> <p>12 position?</p> <p>13 A. Yes. I disagree with you. I disagree with you, and I</p> <p>14 think you are arguing with me, but that is up to you.</p> <p>15 Q. I'm not arguing with you. If I were to tell you,</p> <p>16 Doctor, I have no fear of imminent death, only because</p> <p>17 of the religious faith that I have, would you tell me</p> <p>18 that I was absolutely wrong and that I do have a fear</p> <p>19 of death?</p> <p>20 A. No, I'm not going to argue that. I'm not going to</p> <p>21 answer that. We live in a free country. You can</p> <p>22 think what you want, and I think what I want.</p> <p>23 Q. In which case would you agree with me that my position</p> <p>24 would be just as reasonable as yours?</p> <p>25 A. I don't argue that. You can have your opinions any</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Well, because the opposite is much, much better.</p> <p>2 Q. That would be an opinion of yours, correct?</p> <p>3 A. That is why I wrote that in the opinion. I wrote it</p> <p>4 in other opinions too because that is my conviction.</p> <p>5 Q. That is your conviction based upon your personal</p> <p>6 belief system?</p> <p>7 A. That is my personal belief and my professional belief</p> <p>8 too because there really is no difference between my</p> <p>9 professional belief and my personal belief. I believe</p> <p>10 what I practice.</p> <p>11 Q. As do I, Doctor. We can both be reasonable people and</p> <p>12 happen to disagree on that point?</p> <p>13 A. Okay.</p> <p>14 Q. You are not saying physical pain, correct? You are</p> <p>15 talking about emotional?</p> <p>16 A. I'm talking about all pain, all pain.</p> <p>17 Q. That statement --</p> <p>18 A. All pain.</p> <p>19 Q. Doctor, thank you. I wish you well.</p> <p>20 A. Thank you.</p> <p>21 Q. It's been an honor to ask you questions, sir. I'm</p> <p>22 done.</p> <p>23 MR. O'LOUGHLIN: I'm going to have a couple</p> <p>24 more, Don. Do you have any?</p> <p>25 MR. DAWSON: I have a couple. I will be</p>

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<p style="text-align: right;">Page 85</p> <p>1 very brief.</p> <p>2 EXAMINATION</p> <p>3 BY MR. DAWSON:</p> <p>4 Q. Doctor, during the multiple years that you have been a</p> <p>5 physician have you talked to other colleagues who have</p> <p>6 actually been at the bedside with patients who have</p> <p>7 died and learned of the fear of death that patients</p> <p>8 have expressed?</p> <p>9 A. Have I talked to other colleagues --</p> <p>10 Q. Yes, sir.</p> <p>11 A. Who did what?</p> <p>12 Q. Were at the bedside of people who were dying and saw</p> <p>13 their pain.</p> <p>14 A. Oh, absolutely. I have talked to lots of people like</p> <p>15 that. I have talked to lots of people who have tried</p> <p>16 to commit suicide and were unsuccessful and are</p> <p>17 delighted to have not succeeded.</p> <p>18 Q. And talked about their fear of death?</p> <p>19 A. Talked about their fear of death.</p> <p>20 Q. Are those all bases for your statement that people do</p> <p>21 have a great fear of imminent death?</p> <p>22 A. There are people who are petrified at the thought of</p> <p>23 dying.</p> <p>24 Q. That's all I have, Doctor?</p> <p>25</p>	<p style="text-align: right;">Page 87</p> <p>1 didn't want to catch the bus. The police came and</p> <p>2 took him, and then he was pronounced dead at 7:40.</p> <p>3 I'm not sure if that is exactly an hour and three</p> <p>4 quarters, but somewhere around there.</p> <p>5 Q. And again, I'm having trouble. I'm having trouble</p> <p>6 figuring out what period of time you are talking</p> <p>7 about. Are you talking about the time after he was</p> <p>8 outside the waiting room?</p> <p>9 A. He was out in the street from -- let me see. I think</p> <p>10 somewhere around 6:15 or something like that. I don't</p> <p>11 know the exact time because there are different times</p> <p>12 mentioned, but --</p> <p>13 Q. Let's talk about what you saw that indicated to you</p> <p>14 that Mr. Dunigan was starting to have this utmost pain</p> <p>15 and the fear of imminent death.</p> <p>16 A. He was in a state of building up large quantities of</p> <p>17 edema in the lungs. His lungs weighed like close to</p> <p>18 2,000 ml. I think the combined weight of both lungs</p> <p>19 was 19 -- around 1,900 grams. That is approximately</p> <p>20 900 or 950 grams per lung. That is approximately</p> <p>21 three times normal of what these lungs weighed. It</p> <p>22 takes time for that to occur. Now he has to breathe</p> <p>23 and breathe hard to mix that fluid with air. That is</p> <p>24 what causes foam. That is like drowning in your own</p> <p>25 fluids. That is asphyxiation like drowning without</p>
<p style="text-align: right;">Page 86</p> <p>1 RE-EXAMINATION</p> <p>2 BY MR. O'LOUGHLIN:</p> <p>3 Q. Doctor, just a couple more. In that paragraph</p> <p>4 Mr. VanderLaan was referring you to also, after you</p> <p>5 talk about the fear of doom and the utmost pain and</p> <p>6 there can be no greater pain than the fear of imminent</p> <p>7 death, you state in your report, "James Dunigan</p> <p>8 experienced this type of conscious pain and suffering</p> <p>9 for a duration of at least one and three quarters</p> <p>10 hours."</p> <p>11 What one and three quarter hour period of</p> <p>12 time were you referring to?</p> <p>13 A. Well, I believe that is the time that he spent in the</p> <p>14 waiting room. You know, I don't remember what I</p> <p>15 thought, but you see, he left the waiting room -- he</p> <p>16 went into the waiting room at 4:30. He left the</p> <p>17 waiting room after 6, like around 6:30 actually. He</p> <p>18 was pronounced dead at 7:40. Somewhere in that period</p> <p>19 is an hour and a quarter.</p> <p>20 Q. Okay. It's an hour and three quarters is what you put</p> <p>21 in your report.</p> <p>22 A. Maybe it is then an hour and three quarters. I don't</p> <p>23 really remember that. But the period was figured on</p> <p>24 from the time that he went out on the street where he</p> <p>25 was supposed to go to catch the bus, but he really</p>	<p style="text-align: right;">Page 88</p> <p>1 being even close to the water. That is a most painful</p> <p>2 type of death.</p> <p>3 Q. Okay. I think the only part of that answer that was</p> <p>4 responsive to my question was the "that takes time"</p> <p>5 part in terms of the fluid in the lungs. How much</p> <p>6 time does that take?</p> <p>7 A. Well, it takes quite a while. I cannot tell you</p> <p>8 exactly how long because I don't know when it started</p> <p>9 here. But to have the lungs weigh three times normal</p> <p>10 takes time to develop. I mean it goes without saying.</p> <p>11 I cannot tell you how long. It doesn't take a minute,</p> <p>12 and it doesn't take 15 minutes either.</p> <p>13 Q. Is there a range?</p> <p>14 A. I don't know that range, but I can only tell you that</p> <p>15 three times normal lungs do not -- is not an</p> <p>16 instantaneous condition.</p> <p>17 Q. That is what I'm asking.</p> <p>18 A. The lungs could have only weighed two times normal or</p> <p>19 maybe only somewhat wet lungs, but in this case they</p> <p>20 weighed three times normal. That is a lot of weight.</p> <p>21 That is -- well, to give you a better example, that</p> <p>22 would be -- let me just think a minute. Give me a --</p> <p>23 be patient with me. A half gallon, that would be like</p> <p>24 a gallon of -- that would be half -- that would be a</p> <p>25 gallon of fluid that the lungs had because the lungs</p>

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<p style="text-align: right;">Page 89</p> <p>1 normally weigh about 350 grams, 350 to 400, somewhere 2 in that range.</p> <p>3 When you start having lungs that weigh 4 close to 2,000, that is a lot of weight, a lot of 5 fluid. With that is the hard work breathing, not 6 getting enough oxygen and developing the anxiety that 7 goes with inability to oxygenate. That is what he 8 had. That is called dyspnea. That is called air 9 hunger. That is called all kinds of names.</p> <p>10 Q. Thank you. Now, my questioning started because you 11 put in your report one and three quarters hours. In 12 answer to my questions about that you said you weren't 13 sure what period of time you were referring to.</p> <p>14 My next question was what was going on with 15 Mr. Dunigan that allowed you to say that he was 16 experiencing that utmost pain, that fear of imminent 17 death, and I believe you then referred to how heavy 18 his lungs were, but you couldn't tell me how long that 19 would take. Is that kind of a synopsis?</p> <p>20 MR. DAWSON: Let me object to the form of 21 that question. First of all, he told you that the one 22 and three quarter hour time was from the time he was 23 in the waiting room until the time he went out to the 24 squad car, so your statement is wrong. That is my 25 objection.</p>	<p style="text-align: right;">Page 91</p> <p>1 underestimated. I don't know that. I can tell you 2 this: To get lungs to weigh close to 2,000 ml takes 3 time. It is a lot of painful --</p> <p>4 Q. That is what I'm trying to get at, Doctor. How much 5 time does it take?</p> <p>6 A. I have told you. It takes a lot of time. How much is 7 a lot? An hour and three quarters would qualify.</p> <p>8 Q. Did it take an hour and three quarters for Mr. Dunigan 9 to get to the point where he had what you claim was 10 this fluid accumulating in the lungs that caused the 11 air hunger, difficulty breathing and dyspnea and fear 12 of doom?</p> <p>13 A. Yes, that is exactly what I'm saying, that the buildup 14 of fluids in the lung -- imagine that each and every 15 air sac in the lung --</p> <p>16 Q. Unless you are going to say something that tells me 17 how long it takes, I really don't want to hear it.</p> <p>18 A. Well, I told you how long it takes. It takes an hour 19 and three quarters.</p> <p>20 Q. That is your claim?</p> <p>21 A. That is my claim.</p> <p>22 Q. And that is based on what in relation to this case?</p> <p>23 A. Well, when you have done 60,000 autopsies, either done 24 myself or supervised, and you talk to relatives and 25 when did your uncle start snoring and when did this</p>
<p style="text-align: right;">Page 90</p> <p>1 MR. O'LOUGHLIN: He changed that.</p> <p>2 BY MR. O'LOUGHLIN:</p> <p>3 Q. Is that your testimony, Doctor, and your belief, that 4 Mr. Dunigan had this utmost pain and the fear of 5 imminent death from the time he was wheeled into the 6 waiting room until the time he went in the police car?</p> <p>7 A. Well, he was in the waiting room from 4:30 until 6:30. 8 That means he was in the waiting room -- just taking 9 those numbers he was in the waiting room two hours. 10 He didn't get a ride from the police car. The police 11 car wasn't even there when he went outside. It took 12 time for them to come. Then it took time for them to 13 load him. Then it took time for them to drive to the 14 jail.</p> <p>15 He was dead when they came to the jail, but 16 he died in the car. I don't know exactly the moment 17 that he really died. He was pronounced dead at 7:40. 18 According to the laws of this country everywhere you 19 go all the medical examiners will tell you that a 20 person is dead when he is pronounced dead. He could 21 have died three months earlier.</p> <p>22 So consequently the period of time that I 23 thought was appropriate was an hour and three 24 quarters. Maybe I'm wrong. Maybe I have exaggerated 25 by 15 minutes, maybe I have not. Maybe I have</p>	<p style="text-align: right;">Page 92</p> <p>1 develop and when did that develop, then you develop a 2 scale in your mind.</p> <p>3 Then you can even write a paper about it. 4 I never had the time to do that, therefore, I didn't 5 write a paper, but could I? Yes, I could write a 6 paper about things like that. I'm telling you with 7 total reliability that an hour and three quarters 8 would qualify.</p> <p>9 Q. Okay. Is that a possibility in this case?</p> <p>10 A. That is a possibility, yes. That is a possibility. I 11 don't know -- I have told you I don't know exactly 12 whether it's an hour and three quarters or an hour and 13 40 minutes or maybe even an hour and-a-half. I don't 14 know that for sure. But is it within the realm of 15 likelihood? Absolutely.</p> <p>16 Q. Would you expect that at the point where Mr. Dunigan 17 has this fear of doom, that he would at that point 18 have difficulty breathing, air hunger and dyspnea?</p> <p>19 A. He would have the same as anybody who is submerged in 20 water with nowhere to go. He is fearful of dying but 21 nowhere to go to escape. That is all conducive to 22 this fear of dying, that there is no -- nothing for 23 him that he could do to escape that fate.</p> <p>24 Q. Okay. Can you point to any evidence that Mr. Dunigan 25 was experiencing air hunger, difficulty breathing or</p>

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<p style="text-align: right;">Page 93</p> <p>1 dyspnea up to the point he was placed in the police 2 car?</p> <p>3 A. I don't really know that at that point it was to the 4 point of being certain that he would die at the end of 5 it, but it was more likely than not that that exactly 6 happened, that he was building up fluids as the 7 minutes went by. As I said before, you don't build up 8 this fluid in the lungs in just a few minutes.</p> <p>9 So therefore, how many minutes is it? I 10 can only say an hour and three quarters would be 11 within the realm. Is it a little bit less, a little 12 bit more? I do not know. So that is my answer. So 13 you can take it or leave it.</p> <p>14 Q. What is the shortest period of time in which a patient 15 with a prolonged resuscitation effort can build up 16 that degree of wet lung?</p> <p>17 A. There can be no doubt -- not wet, but drowning lungs. 18 The shortest time begins only when we know and hear 19 that he is starting to snore. But it isn't snoring. 20 To say snoring means -- to the average person means he 21 was sleeping and snoring. Lots of people snore when 22 they sleep. He wasn't sleeping. He was wide awake, 23 afraid to die. That is what he was.</p> <p>24 So to do with the sound that I heard on 25 the -- coming from the automobile where he was trying</p>	<p style="text-align: right;">Page 95</p> <p>1 which I figured out is most likely, that is the most 2 likely time.</p> <p>3 If you want me to cut it down, I can do a 4 deal with you. I think that is a joke. To tell you 5 that it is an hour and-a-half, but then I have to add 6 a quarter of an hour to the end, which means between 7 an hour and-a-half and two hours.</p> <p>8 Q. Okay. I honestly don't think I got an answer to this 9 question. Are you aware of any evidence that 10 Mr. Dunigan experienced air hunger, difficulty 11 breathing or dyspnea at any time before he was placed 12 in the back of the police car?</p> <p>13 A. Absolutely. The knowledge is that the amount of fluid 14 that he eventually had had to have been a long one 15 because of the amount of weight of the lungs. That is 16 measured to the gram because she put the -- 17 Dr. Douglas put the lungs on a scale and measured the 18 weight of each lung separately. One was 800 some 19 grams, and the other one was whatever it was. I don't 20 recall. Close to the -- the total weight was over -- 21 close to 2,000, like 1,900 grams for both lungs.</p> <p>22 Q. Any evidence other than the weight of the lungs at 23 autopsy that allowed you to say that Mr. Dunigan was 24 experiencing any air hunger, difficulty breathing, 25 dyspnea or fear of doom before he was placed in the</p>
<p style="text-align: right;">Page 94</p> <p>1 to find peace by lying down and wasn't let to lie down 2 and had to sit up because they wanted him to sit up 3 because it is a matter of police procedure that I have 4 acquainted myself so many times where I show you who 5 the boss is here. That is what that is.</p> <p>6 So how long? I don't know. An hour and 7 three quarters in this case.</p> <p>8 Q. What is the shortest period of time in which 9 Mr. Dunigan could have developed the lungs that were 10 identified at autopsy?</p> <p>11 A. If I give you the shortest way, I would also have to 12 add that same amount to the longest way. That is not 13 the longest way. The longest way is two hours. The 14 shortest way is quarter of an hour less.</p> <p>15 Q. Is what?</p> <p>16 A. A quarter of an hour less. That means an hour 17 and-a-half to two hours.</p> <p>18 Q. That is your claim?</p> <p>19 A. That is my claim.</p> <p>20 Q. All right. Is that based on anything?</p> <p>21 A. Yes, on my experience. That is because I say so. 22 That is not a very welcome statement to make to a 23 lawyer, but in this case I cannot -- you want me to be 24 a wizard. I cannot put my finger on the exact minute, 25 but I can tell you that an hour and three quarters,</p>	<p style="text-align: right;">Page 96</p> <p>1 back of the police car?</p> <p>2 A. Yes. All these things together, each one of those 3 words and nouns and adjectives and whatever you said 4 just now is in keeping with that opinion for the 5 simple reason that the weight of the lungs like in 6 this case is almost in the maximum. You don't often 7 have this kind of weight. The only equivalent to that 8 is in drowning cases. Now, imagine that --</p> <p>9 Q. Thank you, Doctor. Please listen to my question. 10 Other than the weight of the lungs can you point to 11 any evidence indicating that Mr. Dunigan was 12 experiencing air hunger, dyspnea, difficulty breathing 13 or fear of imminent death before the time he was 14 placed in the police car?</p> <p>15 A. Yes, because he was in need of air, but he had fluid 16 in the lungs. He was in need of air. That is why he 17 was in a state of air hunger. That is why he was 18 trying to breathe and couldn't. That is why he was in 19 a state of fear of death and all these other words 20 that you mentioned. That is why.</p> <p>21 Q. Again, did you see on video or read in any testimony 22 or any other information you have regarding this case 23 any evidence that he was short of breath, having 24 difficulty breathing, had dyspnea, had air hunger or 25 fear of imminent death at any time before he was</p>

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<p style="text-align: right;">Page 97</p> <p>1 placed in the police car other than the weight of the 2 lungs?</p> <p>3 A. I cannot tell you that. The lungs only weigh that 4 much because of the fluid in it. You want me to 5 ignore that. I cannot do that. The man tells me by 6 his breathing that he is in a state of fear of death 7 because he cannot breathe. That is indicated by the 8 foam and by the weight of the lungs and by the amount 9 of fluid in them.</p> <p>10 Then I can tell you this: That when you 11 weigh those lungs, once you take them out of the body, 12 you lose a significant amount of fluid because when 13 you cut the lungs as you do in an autopsy, you take 14 them out of the body, so you cut parts that would lose 15 some fluid. So it's even more than 1,900.</p> <p>16 So don't make me say things that I don't 17 want to say because I think that is nonsense what you 18 are asking me.</p> <p>19 Q. Did you see any evidence on the video -- did you hear 20 anything that indicated Mr. Dunigan had any difficulty 21 breathing at any time before he was placed in the 22 police car?</p> <p>23 A. Well, when the lungs contain a lot of fluid, you have 24 difficulty breathing. Take it from me. Take it from 25 those who survived a drowning. Take it from any one</p>	<p style="text-align: right;">Page 99</p> <p>1 as much as a drowning victim.</p> <p>2 Q. Would it be your opinion that that amount of fluid in 3 the lungs would be evident to anyone looking at 4 Mr. Dunigan and watching or listening to him breathe?</p> <p>5 A. I don't know what anybody would see or remember or try 6 to convince me that he was just on his way to a party 7 when he was put in the police car. No, he was not. 8 He was fighting for survival because he could not 9 breathe. If somebody tells me he was not making any 10 manifestations, let me tell you, they are lying.</p> <p>11 Q. All right. Let's go with that. By the way, have you 12 watched the video?</p> <p>13 A. Yes, I did.</p> <p>14 Q. All of them?</p> <p>15 A. Yes. Several. I think three or four.</p> <p>16 Q. Start to finish from the time Mr. Dunigan went into 17 the waiting room until the time he was wheeled out of 18 the waiting room? Did you watch that video?</p> <p>19 A. I watched several disks. I don't know if they were 20 three or four. I don't remember that because I didn't 21 put the videos into the computer. My office manager 22 did that. I watched them.</p> <p>23 Q. Do you know whether you watched the complete video of 24 the time period from where the surveillance in the 25 waiting room is shown on the video?</p>
<p style="text-align: right;">Page 98</p> <p>1 of those kind of people, including myself, and I will 2 tell you.</p> <p>3 You put the body in a swimming pool and put 4 the body on the bottom, they will tell you too. If 5 they ever get the chance of getting out of the pool, 6 they will tell you what went through their mind.</p> <p>7 Q. Did you see or hear anything on the video that 8 indicated to you that Mr. Dunigan had any difficulty 9 breathing, air hunger, dyspnea or fear of imminent 10 death before he was placed in the back of the police 11 car?</p> <p>12 MR. DAWSON: Objection, asked and answered. 13 Go ahead, Doctor.</p> <p>14 A. I don't know that I have. I don't know that I have 15 heard it before. I wasn't there on the premises. I 16 don't know that I even have pictures of him before he 17 was loaded up into the car, but I do know that he was 18 restless when he was in the car. Before that I 19 necessarily did not see him. I don't know what he did 20 before.</p> <p>21 BY MR. O'LOUGHLIN: 22 Q. Thank you.</p> <p>23 A. But I can visualize that with that amount of fluid he 24 had to have had not just 10 minutes or 15 minutes or 25 not even just an hour to develop enough fluid to have</p>	<p style="text-align: right;">Page 100</p> <p>1 A. Yes. I watched in the waiting room. I watched the 2 videos outside on -- outside the door of the entrance 3 door to the Emergency Department. I watched -- well, 4 as I said, I watched all the videos that were sent 5 here.</p> <p>6 Q. That is my question. Did you watch them in realtime, 7 or did you fast forward?</p> <p>8 A. No, not fast forward. Realtime.</p> <p>9 Q. You watched the entire video, all three sets of 10 videos, from the surveillance in the waiting room, the 11 outside exterior camera at Bronson which shows him on 12 the sidewalk and the video from the back of the police 13 car?</p> <p>14 A. Yes, I did. It took a long time. I can tell you that 15 too.</p> <p>16 Q. We know exactly how long it took because all those 17 videos have times on them.</p> <p>18 A. Yes. I don't remember what time it took because I 19 didn't look. But it took a long time. I know that.</p> <p>20 Q. Great. At any time before Mr. Dunigan was placed in 21 the back of the police car are you aware of any 22 evidence indicating that he was foaming at the mouth?</p> <p>23 A. I don't know what he did at each time. I cannot tell 24 you. I can only tell you what he is likely to have 25 done because of the weight of the lungs, because of</p>

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<p style="text-align: right;">Page 101</p> <p>1 the amount of water in the lungs, because all that</p> <p>2 would have caused him to be short of breathing space</p> <p>3 because most of the lungs were occupied by edema, by</p> <p>4 fluid. So that causes someone to not be able to</p> <p>5 breathe and have air hunger.</p> <p>6 So if he is an exception, well, I don't</p> <p>7 know. There is no exceptions to air hunger. When you</p> <p>8 don't have ability to breathe, you develop air hunger,</p> <p>9 whether you like it or you don't.</p> <p>10 Q. You would expect that to be visible to someone who was</p> <p>11 looking at him?</p> <p>12 A. I don't know what somebody observes when he observes</p> <p>13 air hunger. Maybe he calls it something else. I</p> <p>14 don't know. I don't know that. But I do know what</p> <p>15 people who come out of water what they think about</p> <p>16 drowning, and that is drowning in your own fluids.</p> <p>17 Q. By the way, you would agree that he had no signs or</p> <p>18 symptoms of air hunger, dyspnea, difficulty breathing</p> <p>19 or wet lungs while he was being examined in the</p> <p>20 Emergency Department, true?</p> <p>21 A. I don't know what he exhibited there. There is no</p> <p>22 mention of him having snoring breath sounds when he</p> <p>23 was in the emergency room. There is no mention in</p> <p>24 this doctor's records that he heard or saw air hunger.</p> <p>25 I don't even know that he knows that term. I have no</p>	<p style="text-align: right;">Page 103</p> <p>1 conveniently, that he was given oxygen at the same</p> <p>2 time.</p> <p>3 Q. On room air. No.</p> <p>4 A. On room air. That is marked in the records that it's</p> <p>5 on room air, right?</p> <p>6 Q. Yes.</p> <p>7 A. Okay. Well, tell me another one. He was building up</p> <p>8 fluids.</p> <p>9 Q. You are saying that couldn't have been the case when</p> <p>10 he was in the Emergency Department being examined by</p> <p>11 Dr. Regot?</p> <p>12 A. Well, he was in the Emergency Department because of</p> <p>13 chest pain, and the chest pain was obviously not from</p> <p>14 falling off the bus or falling on the cement. So he</p> <p>15 had no injuries according to this doctor. So you</p> <p>16 can't have it both ways. Okay. Thank you very much.</p> <p>17 I think I'm going to leave now. You have kept me way</p> <p>18 beyond 5:00. I don't know what the time is. What is</p> <p>19 the time?</p> <p>20 COURT REPORTER: 5:52.</p> <p>21 A. 5:52. So it's an hour later. It's almost 6:00.</p> <p>22 BY MR. O'LOUGHLIN:</p> <p>23 Q. So you are terminating the deposition?</p> <p>24 A. Well, I'm not terminating anything, but I mean I have</p> <p>25 asked you to let me go out of here at 5:00, but you</p>
<p style="text-align: right;">Page 102</p> <p>1 idea. Maybe he calls it dyspnea. I have no idea. I</p> <p>2 don't know this doctor.</p> <p>3 Q. If Mr. Dunigan was in the condition you are describing</p> <p>4 in the Emergency Department, would you expect him to</p> <p>5 have a regular respiratory pattern?</p> <p>6 A. I don't know what a regular respiratory pattern is</p> <p>7 when somebody has edema in the lungs because he</p> <p>8 probably did have edema because those coronaries did</p> <p>9 not afford him good health. So was he -- did he have</p> <p>10 edema/fluid in the lungs? I'm sure he did. He was in</p> <p>11 congestive heart failure.</p> <p>12 Q. And you are saying that was the case when he was in</p> <p>13 the Emergency Department being examined by Dr. Regot?</p> <p>14 A. Exactly.</p> <p>15 Q. All right. Let's stick with that. That is what you</p> <p>16 just said, true?</p> <p>17 A. Yes. Exactly. Yes, and I sign it.</p> <p>18 Q. All right. Listen to me, please. Would you expect</p> <p>19 someone who was -- who had edema of the lungs and</p> <p>20 congestive heart failure on clinical examination to</p> <p>21 have no respiratory distress, normal breaths sounds,</p> <p>22 no rales, no wheezing, clear lungs on auscultation</p> <p>23 bilaterally, a regular respiratory pattern and a 98</p> <p>24 percent oxygen saturation?</p> <p>25 A. On oxygen, right? Now, that you didn't tell me</p>	<p style="text-align: right;">Page 104</p> <p>1 didn't. So now you can keep me until midnight.</p> <p>2 Q. I asked you if you wanted a break. You said you</p> <p>3 wanted to go ahead and finish, which I am very close</p> <p>4 to doing if I can get an answer to my question.</p> <p>5 A. Okay.</p> <p>6 Q. Would a patient with pulmonary edema to the extent</p> <p>7 that the patient is experiencing the fear of doom be</p> <p>8 expected to have clear lungs to auscultation</p> <p>9 bilaterally, no respiratory distress, normal breath</p> <p>10 sounds, no rales, no wheezing, a regular breathing</p> <p>11 pattern and a 98 percent oxygen saturation on room</p> <p>12 air?</p> <p>13 A. I'm inclined to believe, since I cannot believe that</p> <p>14 the doctor over there in the emergency room did not</p> <p>15 hear him snore. So I believe that he probably did not</p> <p>16 snore at that time, but he did snore later on, and it</p> <p>17 got worse and not better because he didn't do anything</p> <p>18 to make this patient get better. He just gave him an</p> <p>19 x-ray. The x-ray didn't touch him as far as improving</p> <p>20 his condition. The x-ray didn't do anything.</p> <p>21 Q. Are you able to --</p> <p>22 A. I'm sorry?</p> <p>23 Q. Are you able to answer my question?</p> <p>24 A. Yes. I am answering your question. You just don't</p> <p>25 like the answer.</p>

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<p style="text-align: right;">Page 105</p> <p>1 Q. Was your answer that you didn't believe those findings 2 were correct?</p> <p>3 A. No, I didn't say that. I said he probably was not 4 snoring at the time, but the snoring developed while 5 he was in with him from 2:13 until 4:30. Then at 4:30 6 he was in the waiting room. So for another two hours 7 or hour and-a-half. So did he have all of these 8 manifestations at that time? Maybe not. Maybe he had 9 a few other manifestations, but that he was without 10 any edema and he was perfectly fine and he was on his 11 way to the dancing club, no, that he wasn't. He 12 wasn't on his way to the dancing club.</p> <p>13 He was in dire condition. He had two 14 coronary arteries that were almost obstructed. Almost 15 obstructed, well, they were one percent short of being 16 almost obstructed. So you are telling me that this 17 didn't manifest itself in any way? Well, you must 18 think that I was born yesterday.</p> <p>19 Q. Would the findings described be completely 20 inconsistent with a patient who has pulmonary edema to 21 the extent that they are suffering the fear of 22 imminent death?</p> <p>23 A. I didn't say that he had fear of imminent death in the 24 first two hours in the emergency room. I didn't say 25 that.</p>	<p style="text-align: right;">Page 107</p> <p>1 Q. Does that mean you can say that it was occurring while 2 he was in the Emergency Department?</p> <p>3 A. Yes.</p> <p>4 Q. Which was --</p> <p>5 A. I'm saying because the waiting room is the Emergency 6 Department also.</p> <p>7 Q. No. We have already distinguished that, but I will 8 try it again. Up to the time he went to the waiting 9 room after he was discharged from the Emergency 10 Department are you aware of any evidence indicating 11 that he had any respiratory difficulty or pulmonary 12 edema whatsoever?</p> <p>13 A. I have already answered this I don't know how many 14 times today. I will answer this one more time, sir. 15 Then after that I hope you will have the decency of 16 letting me out of here.</p> <p>17 Q. I think it can be answered yes or no.</p> <p>18 A. Then ask me again.</p> <p>19 Q. Are you aware from the time -- pardon me -- up to the 20 time -- before the time that Mr. Dunigan was 21 discharged from the Emergency Department to the 22 waiting room are you aware of any evidence indicating 23 that he had any respiratory difficulties whatsoever?</p> <p>24 A. No, I do not.</p> <p>25 Q. Thank you.</p>
<p style="text-align: right;">Page 106</p> <p>1 Q. That is what I'm trying to ask you, Doctor.</p> <p>2 A. I didn't say that. I said he was not breathing heavy. 3 I didn't say that he was -- that Dr. Regot heard him 4 snore but he didn't say it. I didn't say that. He 5 developed the pulmonary edema down the line, this 6 heavy pulmonary edema that caused him to be heard 7 around the block. That is the pulmonary edema he 8 ended up with.</p> <p>9 Q. Is there a single piece of evidence that you are aware 10 of that Mr. Dunigan exhibited any respiratory symptoms 11 that would indicate pulmonary edema or anything else 12 while he was in the Emergency Department before he 13 went to the waiting room?</p> <p>14 A. I don't know. There is no such thing mentioned, but 15 there is plenty mentioned later on because I heard it, 16 and that did not develop --</p> <p>17 Q. I don't care about later on, Doctor. Please listen to 18 my question.</p> <p>19 A. No, no, no, no, no. You are misleading, sir. By 20 doing that you are misleading me and the reader of 21 this deposition. You are misleading asking me like 22 that.</p> <p>23 I am saying that this snoring in the car 24 did not develop instantly, and I tell you that again 25 and again and again.</p>	<p style="text-align: right;">Page 108</p> <p>1 A. Okay.</p> <p>2 Q. Do you know when Mr. Dunigan lost consciousness?</p> <p>3 A. I'm sorry?</p> <p>4 Q. Do you know when Mr. Dunigan lost consciousness?</p> <p>5 A. He lost consciousness in the automobile.</p> <p>6 Q. What --</p> <p>7 A. Yes, he lost consciousness in the automobile because 8 when -- yes. When he was not getting oxygen, he lost 9 consciousness.</p> <p>10 Q. Do you recall from the video and audio in the police 11 car that after the officers got into the car 12 Mr. Dunigan asked them if they could take the cuffs 13 off?</p> <p>14 A. Yes, I know that. He was conscious then.</p> <p>15 Q. Did he indicate that he was having any difficulty 16 breathing or respiratory difficulty at that time?</p> <p>17 A. No, he didn't, but he wanted the handcuffs off because 18 it's more comfortable than having your wrists tied 19 behind your back. He was not comfortable. The 20 decency of the police officer would have been to 21 comply with the request. It wouldn't have hurt them 22 to do that.</p> <p>23 Q. At that time, the time he asked to have the cuffs 24 taken off, did he indicate that he had the fear of 25 imminent death?</p>

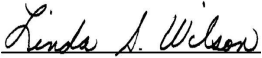
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<p style="text-align: right;">Page 109</p> <p>1 A. No. Come on now. You know that he didn't do that.</p> <p>2 No, he didn't do that.</p> <p>3 Q. Okay. From that point how long was it before he lost</p> <p>4 consciousness?</p> <p>5 A. I don't know when he lost consciousness. He was found</p> <p>6 dead. They were most surprised. How did this faker</p> <p>7 die of fake?</p> <p>8 Q. Do you know how long --</p> <p>9 A. That was strange.</p> <p>10 Q. Do you know how long Mr. Dunigan was conscious in the</p> <p>11 back of the police car?</p> <p>12 A. I don't know. But when they put him in there, he was</p> <p>13 conscious. He was conscious when he asked for the</p> <p>14 cuffs to be removed. How long he was unconscious</p> <p>15 before he was pronounced dead I have no idea. Nobody</p> <p>16 knows when he died.</p> <p>17 Q. That was my question. That was my question, Doctor.</p> <p>18 Thank you. You don't know, right?</p> <p>19 A. I don't know because nobody knows when he actually</p> <p>20 died. We know that he was pronounced dead at 7:40,</p> <p>21 but when he actually died we do not know in the</p> <p>22 presence of those cuffs.</p> <p>23 Q. Okay. So you also don't know how long he experienced</p> <p>24 any conscious pain and suffering, true?</p> <p>25 A. I assume that he died shortly before they arrived at</p>	<p style="text-align: right;">Page 111</p> <p>1 because that breathing is ominous. And if you hear</p> <p>2 it, you know that somebody is breathing and probably</p> <p>3 conscious because that breathing is fighting for air.</p> <p>4 Q. What makes you say that that means they are probably</p> <p>5 conscious?</p> <p>6 A. Because he's fighting for air. He cannot go to sleep.</p> <p>7 Q. Were you involved at all in Dr. Kevorkian's case?</p> <p>8 A. Yes. I did autopsies on some of his victims.</p> <p>9 Q. Were you involved in any of the litigation?</p> <p>10 A. No, I was not.</p> <p>11 Q. Did any of Dr. Kevorkian's victims have that utmost</p> <p>12 worst pain, no greater fear than the fear of imminent</p> <p>13 death?</p> <p>14 A. You know, I don't remember that. That is too long</p> <p>15 ago. I don't remember.</p> <p>16 Q. All right, Doctor. I will tell you in advance that I</p> <p>17 will protest any bills for the time this deposition</p> <p>18 took beyond what was the \$2,500 that we paid you. I</p> <p>19 will take it to the Judge with this transcript to</p> <p>20 explain why it took so long.</p> <p>21 MR. VANDERLAAN: Doctor, this is Allan</p> <p>22 VanderLaan. I pray for your continued good health and</p> <p>23 that you see many more sunrises. Mr. Dawson, I didn't</p> <p>24 see you, but --</p> <p>25 MR. DAWSON: That's all right. I am here.</p>
<p style="text-align: right;">Page 110</p> <p>1 the police station, but I cannot be absolutely sure.</p> <p>2 It can be before, and it can be later. I do not know</p> <p>3 exactly. I do not know. I would have to speculate</p> <p>4 when he actually stopped breathing and had a</p> <p>5 heartbeat.</p> <p>6 Q. So you are --</p> <p>7 A. They certainly never made an effort in the police car</p> <p>8 to determine when he died, to be aware that he</p> <p>9 suddenly stopped breathing because God only knows when</p> <p>10 he breathed, he let them know that he is breathing by</p> <p>11 snoring loud and clear, and suddenly it stopped.</p> <p>12 Q. You are unable to offer an opinion as to how long</p> <p>13 Mr. Dunigan experienced conscious pain and suffering</p> <p>14 while in the back of the police car, true?</p> <p>15 A. He stopped breathing at some time in the police car.</p> <p>16 When the exact minute was that he stopped breathing I</p> <p>17 cannot tell you.</p> <p>18 Q. And stopping breathing -- one can be breathing and</p> <p>19 still not be conscious, true?</p> <p>20 A. Say that again.</p> <p>21 Q. One can be breathing but unconscious, true?</p> <p>22 A. Well, you can snore and be unconscious, so I guess you</p> <p>23 can breathe and be unconscious. But --</p> <p>24 Q. All right.</p> <p>25 A. But when you stop breathing, the neighborhood knows it</p>	<p style="text-align: right;">Page 112</p> <p>1 MR. VANDERLAAN: It's been a pleasure.</p> <p>2 Thank you.</p> <p>3 MR. DAWSON: Good seeing you all.</p> <p>4 (The deposition was concluded at 6:05 p.m.</p> <p>5 Signature of the witness was not requested by</p> <p>6 counsel for the respective parties hereto.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 CERTIFICATE OF NOTARY</p> <p>2 STATE OF MICHIGAN)</p> <p>3) SS</p> <p>4 COUNTY OF OAKLAND)</p> <p>5</p> <p>6 I, Linda S. Wilson, certify that this</p> <p>7 deposition was taken before me on the date</p> <p>8 hereinbefore set forth; that the foregoing questions</p> <p>9 and answers were recorded by me stenographically and</p> <p>10 reduced to computer transcription; that this is a</p> <p>11 true, full and correct transcript of my stenographic</p> <p>12 notes so taken; and that I am not related to, nor of</p> <p>13 counsel to, either party nor interested in the event</p> <p>14 of this cause.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 </p> <p>21</p> <p>22 LINDA S. WILSON, CSR-0973</p> <p>23 Notary Public,</p> <p>24 Oakland County, Michigan.</p> <p>25 My Commission expires: 2/24/19.</p>	Page 113